

# **RHODE ISLAND**

---

## **Victims' Rights Needs Assessment**



June 1, 2001

---

**BOTEC Analysis**

**CORPORATION**

103 Blanchard Rd, Cambridge, Massachusetts 02138

# Rhode Island Victims' Rights Needs Assessment

## Table of Contents

	Preface	2
	Executive Summary	3
	Introduction	9
A.	Historical Overview	12
B.	Analysis of Rhode Island's Victim Rights	19
I.	Victims Not Entitled to Rights	22
II.	Victims Entitled to Pre Arrest Rights Only	22
III.	Victims Entitled to Post Arrest and Pre Conviction Rights	24
IV.	Victims Entitled to Rights for Successfully Prosecuted Cases	24
V.	Victims Entitled to Post Disposition Rights	26
VI.	Additional Rights to Felony Victims	27
VII.	Rights for Victims Whose Perpetrators Are Convicted After Trial	28
VIII.	Rights for Victims Based on Victim or Crime Characteristics	28
	1. Victims of Domestic Violence	
	2. Family Members of Homicide Victims	
	3. Children Victims	
C.	Agencies Responsible for Rights Provision	31
I.	Law Enforcement	31
II.	Courts	33
III.	Prosecutors	37
IV.	Corrections: Probation/Parole, Parole Board and Adult Correctional Institutions	40
D.	Analysis of Victim's Rights Needs	44
I.	Victim Notification: Are Victims Being Notified of Their Rights?	46
II.	Victim Participation: Are Victims Being Allowed and Encouraged to Participate in the Criminal Justice Process?	76
III.	Victim Compensation: Are Victims Being Made Whole?	92
IV.	Victim Safety: Are Victims Being Protected?	100
	Appendices	
	1. Victim Survey Results	117
	2. Findings and Recommendations Summary	122

## **Preface**

The Rhode Island Victims' Rights Needs Assessment is designed to provide Rhode Island officials concerned with the implementation of the state's extensive Constitutional and statutory victim's rights mandates with an assessment of victims' needs.

Notwithstanding these legal mandates, the following questions must be answered. Are victims being notified of their rights? Are cooperative victims being allowed and encouraged to participate in the criminal justice system at all stages? Are victims being made whole? Are victims receiving protection from harm that may result from their participation in the criminal justice system?

To answer these questions, we have employed two different methods of investigation. First, we have conducted a survey of victims whose perpetrators have been arrested for felony cases that were tried within the past two years in Rhode Island's Superior Court. The cases ranged from homicides and rapes to robberies. The surveys document the extent of victim involvement and their level of satisfaction with the present delivery system of services offered through the criminal justice system to victims of crime.

Second, we have analyzed both victim's rights and the agencies responsible for protecting and upholding those rights. Then we assessed the agencies' effectiveness from the point of view of a victim afforded those rights and services.

In order to accomplish this assessment, a vast number of officials and agencies were contacted, site visits conducted and agency reports reviewed. This report could not have been possible without the active cooperation of too many people to list here. However, suffice it to say, their cooperation and commitment to victim rights have made this report possible.

While credit for the material in this report goes to them, any mistakes, misstatements or misinterpretations are solely the author's. While it was the author's charge to describe gaps, duplications and weaknesses in the current system for providing victim rights and related services, such findings do not and cannot subtract from the overall excellence found among almost all officials and agency personnel involved in assisting crime victims. Their consistent level of enthusiasm, energy, and commitment has made Rhode Island a leader in insuring victims of crimes an array of rights.

The faults found pertain to structural and organization shortcomings, not shortcomings in the efforts and abilities of the personnel involved in this effort. It is the hope of the author that once these structural weaknesses are addressed, the existing efforts and abilities of those personnel will take the state a quantum leap forward in providing each and every crime victim his or her rights and services guaranteed by the state Constitution and statutes. In the final analysis, victims' rights do more than address specific victim needs, but help insure a more just and safe society for all.

## **Rhode Island Victims' Rights Needs Assessment**

### **Executive Summary**

In 1986, Rhode Island amended its Constitution to enact the nation's first Victim's Rights Amendment, building on an earlier statutory Victim's Bill of Rights passed in 1983. Since that date, the state has continued to strengthen and expand its victim's rights laws. Many other states have followed Rhode Island's lead.

As with the many victims' rights laws it has engendered, Rhode Island's have four basic purposes:

- 1) Notify victims of all criminal proceedings of their perpetrators;
- 2) Allow victims full participation in the process;
- 3) Make victims whole through financial compensation;
- 4) Increase the safety of victims by increasing prosecution and offender accountability through increased victim involvement and cooperation.

As the state's Supreme Court noted in a 1998 review of the state's victims' rights laws, they are not self-executing. To implement them, Rhode Island has created a new category of criminal justice personnel, "victim advocates" whose job it is to both inform victims of their rights and offer them assistance in exercising those rights. Victim advocates are found throughout the courts, the Attorney General's Office, the Department of Corrections and the Parole Board as well as an array of non-governmental agencies.

This report is in response to a request by the Rhode Island Justice Commission to complete an assessment of victims' rights and services mandated by the Victim's Rights Constitutional Amendment and statutory Victim's Bill of Rights and related laws. To do so, BOTECH Analysis Corporation conducted a survey of select victims of felonies and completed a qualitative analysis of the efforts of the various agencies responsible for the laws' implementation.

### **Major Findings:**

The state has made great strides in its pioneering efforts to make rights for victims of crime a reality. Among other things, it has established by law an array of victim rights spanning the criminal justice system for cooperative crime victims from the initial police investigation through release of an offender from prison. In its efforts to establish a statewide court victims' services unit, the Administrative Office of the Courts has contracted out victims' services to two different private, non-profit agencies, the Rhode Island Coalition Against Domestic Violence and Justice Assistance. In addition, the State Attorney General's Office has established its own victim advocacy agency. The courts have also created two agencies responsible for collecting and disbursing court ordered restitution for crime victims. Finally, the state has created a far-reaching criminal and civil protective order system to provide immediate relief to victims of family and related abuse.

As a result, the state regularly and routinely provides notification to a substantial number of victims each year. In regard to victims of felonies, the state's notification program is among the best in the nation, reaching the vast majority of victims as their perpetrators' cases go through the system. However victim notification falls off as the case progress and does not generally include the offenders' final release from prison. In regard to victims of misdemeanors, however, challenges remains. With the exception of victims of domestic violence, victims of misdemeanants are not regularly and routinely notified of their rights or the progress of their offenders' cases through the criminal justice system.

In regard to increasing victim participation, the success of the state is more limited. The vast majority of victims remain on the sideline. At most, victim participation is limited to the submission of written victim impact statements by approximately a third of victims of felonies. While many victims choose not to participate, the fact is that few feel empowered to do more than provide impact statements. Although most victims feel encouraged by victim advocates to submit impact statements, most feel no similar encouragement to participate by police, prosecutors, judges or correctional officials.

Over 60% of the victims are satisfied, for example, with information they are given about the process, about court hearings, and about services available to them. Only 53%, however, express satisfaction with the opportunity to have any say in the sentence that the defendant is given.

Yet, on the whole, victims are satisfied with the criminal justice system. This satisfaction most likely reflects the fact that the perpetrators in this sample were all arrested and charged and in addition, almost all were prosecuted and most were imprisoned. Reflecting their feelings of alienation from the criminal justice system, however, satisfaction levels were lower for the two court-based victim service providers than offender focused justice officials. While 70% or more expressed satisfaction with police and prosecutors, only 53% or less are similarly satisfied with victims' advocates from Justice Assistance and the Victims' Services Unit of the Attorney General's Office. Only the Department of Corrections scored lower with 32.3% expressing satisfaction. Further, almost half of the victims report that the services provided them, or the families of victims in homicide cases, to be either "completely" or "less than adequate." Only 47% rate support services as either "more than" or "somewhat" adequate. Not surprisingly, victim notifications alone are insufficient to meet victims needs. See the tables in Appendix 1.

Victims' financial losses caused by crimes are routinely ignored by the criminal justice system. While the majority of felony victims report financial losses as a result of the crimes, most are not ordered restitution by the courts. When restitution is ordered and paid by defendants, many victims do not receive it. Further, most victims are not informed of their right to compensation from the state. Even fewer report requesting it.

While the state Constitution entitles victims to receive restitution from their perpetrators, this right is effectively limited to requesting restitution as an element of case disposition and facilitating the right of victims to sue in civil court to collect unpaid balances. Whether or not victims are actually ordered restitution depends upon the problematic advocacy of prosecutors and acquiescence of judges.

Victim protection remains the greatest unmet challenge facing Rhode Island. While overall crime in Rhode Island, as in the rest of the country, has fallen dramatically over the past decade, homicides remain atypically high in the state. Further, despite intensive efforts aimed specifically at victims of domestic violence, domestic related homicides have not decreased here as elsewhere. The civil protective order system, established to provide immediate relief for victims of abuse, reaches relatively few victims across the state. Most of the orders requested are quickly dropped and those maintained are not uniformly enforced.

The review of the state's criminal justice system reveals what has been found across the country. It is extremely difficult to simply graft victim's rights onto the existing criminal justice system. Many rights given victims pursuant to legislation contradict existing laws and practices that make it difficult for victims to claim those rights. Examples in Rhode Island are many.

- Victim notification, itself, the predicate upon which most of the other rights rest, has been compromised and made exceedingly more difficult due to the failure of the criminal justice system to accommodate victims. While police are required to provide victims of domestic violence with a written summary of their rights and available services, they are not required to provide equivalent information to the state's many other victims and, in fact, do not to do so. As a result, most victims whose perpetrators are not arrested are not informed of the rights or services available to them. If their perpetrators are arrested and prosecuted, the failure of courts to alter their offender focused case management system to include basic victim information has meant that every agency has had to construct, with varying degrees of success, a separate victim file. Each victim file must rely on the contact information captured by the police that become dated as the case progresses through the criminal justice system. By the time the cases reach the Parole Board, the majority of victim notification letters are returned by the Post Office.

- The provision of court-based victim services itself has been structured in a patchwork, incomplete, and inefficient manner. Most victims in the District Court receive few if any services. Victims of domestic violence, while afforded the opportunity to explain the impact of the crime and to comment on the case's disposition, are not provided with victim impact statement forms that would allow them to exercise these rights with the least amount of inconvenience and trauma.

- Although judges ordering restitution are required to enter civil judgements against the defendants enforceable by victims in civil court, few victims are ever informed of this provision. Even if informed, most proceedings would require an initial outlay of funds larger than the amounts owed victims.

- Although the law provides for victims to be protected from harm, existing state bail statutes limit the ability of judges to consider the danger of almost all offenders in deciding pre-trial release with the exception of those charged with specific drug crimes. Although felony victims are provided notice of their perpetrators' release, the notification system is so cumbersome that they receive it days after the fact. While the law mandates that courts provide victims with secure waiting areas in court where "feasible," almost none of the courts has found room. Only the victim advocates within the Office of the Attorney General have been provided with offices within the courts to meet with victims.

Despite the complex and unwieldy structure of the criminal justice system, there are a number of basic legal and administrative reforms that could reduce many of the barriers that exist for victims in exercising their rights. If these barriers were removed, more victims would participate in the process, be made whole and be better protected from future harm.

### **Major Recommendations:**

- Police should provide all crime victims with a written summary of the rights and services available to them. Recently the Acting head of the Providence police has indicated he would order City police to provide family members of homicide victims with such written notice. This practice should be expanded to include all victims and should be adopted by all police departments across the state.

- The basic police incident report should be amended to include the name and contact information of a third party who can help the system track down victims who move from the address initially given to police. This should go a long way to addressing the system's present inability to contact an increasing percentage of victims as their perpetrators' cases progress deeper into the criminal justice system.

- A separate, accountable agency should be established whose sole purpose is to provide for accurate and timely victim notifications as mandated by law. This agency should build upon the excellent foundation established by the Rhode Island Coalition Against Domestic Violence, Justice Assistance, Attorney General, Parole Board and Corrections victim advocates presently charged with this duty. It should establish a centralized victim information system that automatically notifies both victims and related victim service providers of all relevant hearings from arraignment to final release from prison. The planning grant secured by the Justice Commission from the National Governors' Association to establish a computerized victim notification system affords the means to develop such a system. Further, the Department of Corrections' proposed inmate notification system might serve as a vehicle for such a comprehensive victim notification system.

- In addition to notification, all victims should receive advocacy and assistance from trained advocates, including specialized advocacy and assistance for victims with special needs. For example, domestic violence advocates should assist all victims of

domestic violence, not just victims of misdemeanors in District Court. These advocates should follow victims as needed from the initial police investigation through the offender's final release from prison. Other special needs victims should also be followed, including victims of sexual assault, property crimes, family members of homicide victims, children, the elderly and the disabled.

At the same time, prosecutors should expand their efforts to collaborate and encourage victim participation in both the prosecution and sentencing of perpetrators. These efforts, built upon the present work of the Attorney General's Victims Services Unit and the Victim Coordinator in the special domestic violence prosecution unit, should be in addition to, not in lieu of non-prosecution based victim advocates.

- Victims should be provided a means to receive redress for violations of their rights. The state should establish a crime victim's rights board to investigate, mediate, review and redress victim complaints of rights violations.

- Criminal justice agencies and the courts should complete comprehensive audits of their policies and procedures to remove existing barriers to victim rights. They should establish victim advisory boards to assist in the development of victim-friendly policies and procedures to augment victim involvement and increase the effectiveness of agency victim advocacy. The recent hiring of a Victim Coordinator and development of a victim information video by the Parole Board are both examples of how agencies may go beyond mere mailing of victim notifications to increase victim involvement. The Family and District Courts should review their civil protective order program to increase utilization among abuse victims. On a larger scale, the *de novo* system in the courts should be eliminated to facilitate victim involvement, minimize trauma and increase protection. *De novo* makes it more difficult for the state to protect some of its most vulnerable victims, particularly victims of domestic violence, sexual abuse and stalking.

- Victims should be ordered restitution for out of pocket losses and related civil damages as a condition of any sentence, case diversion, parole, work release or related proceeding mandated by law. The present procedural right to request restitution should be transformed into a substantive victim right.

- State bail laws should be amended to require judges to consider the level of future danger a defendant would pose to his/her victim(s) if released.

- The Attorney General's efforts to establish specialized prosecution of domestic violence perpetrators should be expanded throughout the court system to include misdemeanor as well as felony defendants. The proposed Sexual Assault Response Team currently being established by the Attorney General and the Sexual Assault and Trauma Resource Center should similarly be evaluated for expansion across the state. Complementing these efforts, the state's probation department should expand its specialized domestic and sexual violence supervision units to include all eligible probationers.



- The state should establish a fatality review commission to insure that, at the very least, no Rhode Island victim dies in vain. The state should have a mechanism to learn from any mistakes made to improve its ability to protect its citizenry.

## Introduction

The relationship between victims and the state is complex. Although it is generally understood that the state has an affirmative obligation to protect its citizens and enforce the law, most crime victims do not report their victimization to requisite federal, state or local criminal justice officials. A majority of crimes are not, for example, reported to police, including violent crimes.<sup>1</sup> As a result, most crime victims do not receive any direct assistance from government agencies.

When victims do report crimes, police often do not apprehend the perpetrator. Or they eventually apprehend the perpetrator but he ends up being charged and convicted for only a portion of the crimes he allegedly committed, leaving many victims' cases officially unresolved.

When the perpetrator is arrested and prosecuted, the state, not the victim, becomes the moving party, the legal "victim" of the criminal act. Historically, the victim's role has been marginalized to that of "witness." Even this role is extremely limited because the vast majority of cases resolved in court are done so before trial as part of a plea bargain between the prosecutor and defense. In 1999, Rhode Island District Courts processed approximately thirteen thousand cases. The majority of these cases were resolved by plea while only 245 cases were resolved by trial (<2%). In Superior Court, just over five thousand cases were processed and again, the majority was resolved by plea and while only 76 cases were resolved by trial (<1.5%). Consequently, the history of modern jurisprudence has seen the progressive alienation of the victim from the criminal justice system.

This alienation, in turn, frustrated the state's ability to protect its citizens. The state's ability to identify and prosecute criminals depends upon the goodwill and cooperation of its citizenry, particularly crime victims. For this reason alone, the United States Supreme Court wrote in a 1983 opinion that "courts may not ignore the concerns of victims," noting that to do so risks discouraging them from reporting crimes to the authorities.<sup>2</sup> The high Court's concerns were bolstered by studies indicating substantial victim dissatisfaction with the operations of the criminal justice system.<sup>3</sup>

Encouraged by advocates and others to address this, a number of states, led in large measure by Rhode Island, enacted legislation mandating specific rights for crime victims. These include both procedural and substantive rights.

First, the state recognizes its obligation to inform victims of the progress of perpetrators' cases and have input in regard to the case outcome, beyond that of a mere

---

<sup>1</sup> Perkins, C. May 1996, Criminal Victimization in the United States, 1993. Bureau of Justice Statistics (only 35% of all victimizations are reported and only 42% of violent victimizations are reported to police).

<sup>2</sup> *Morris v. Slappy*, 461 U.S. 1, 14 (1983).

<sup>3</sup> Hudson, P. (1984). The Crime Victim and the Criminal Justice System: Time for a Change, Pepperdine Law Review, 11, 25-26 (44% of crime victims vowed never to become involved with the criminal justice system again.)

witness to the events that occurred. The laws are designed to allow victims to present the impact of their victimization before the court and their recommendations regarding the proper resolution of the case. If fully implemented, these laws change the basic criminal case-processing paradigm from one of two party negotiations with judicial oversight to three party negotiations with judicial and limited victim oversight. Not only do the laws introduce the victim into prosecution-defense negotiations, but allow the victim to declare his or her opinion on any agreement reached independently before the judge.

Second, the state recognizes its responsibility to ameliorate the effects of the crime experienced by the victim. Recognizing that victims can suffer both financial and emotional distress as a result of their victimization, the laws seek to make the victims whole. This is accomplished in several basic ways. State victims' indemnity programs have been established in every state and the federal government for victims. Whether or not their perpetrators are arrested and prosecuted, qualified victims are entitled to receive some measure of financial compensation. In addition, courts introduced civil-like remedies into criminal proceedings, making criminal defendants accountable to their victims through the payment of restitution. Previously, victims had to hire their own attorneys to sue the defendant civilly in order to receive from their perpetrator any damages for their losses.

Third, the state recognizes that victims, left on their own, are not able to negotiate the complexity of the criminal justice system. Unlike the defendants charged with victimizing them, victims do not have access to lawyers, paid for by the state if they are indigent, to represent them and explain how the system works. Typically, the laws introduce new actors into the criminal justice system, namely "victim advocates" hired specifically to assist victims.

As this report describes in the following section, Rhode Island's provides for all of these basic victim's rights and a little more.

Initial evaluations of the impact of victim's rights law have validated the Supreme Court's contention. Studies suggest that crime victims are more willing to report crime and cooperate with the criminal justice system if they perceive that the state recognizes and seeks to protect their rights and assist them as crime victims. National studies indicate that victims in states with strong victim rights protections are more likely to consider the criminal justice system "as more than adequate." In states with weaker victim rights protections, victims are far more likely to rate the criminal justice system as "completely inadequate."<sup>4</sup>

However, these same studies document substantial challenges faced by states in implementing victim's rights laws. First, even states with strong victim rights protection laws often are unable to provide basic notification information to a majority of their crime victims. Nearly two thirds of crime victims in these states were not notified, for

---

<sup>4</sup> Kilpatrick, D., Beatty, D. & Howley, S. December 1998). The Rights of Crime Victims-Does Legal protection make a Difference? National Institute of Justice, Research in Brief."

example, that the accused offender was out on bond and almost one half were not notified of sentence hearings.

Second, even when victims are contacted, they often find an unresponsive criminal justice system. While criminal justice agencies have willingly added victim advocates to their existing staffs, many agencies have proven resistant to efforts to alter their daily operations and policies to accommodate crime victims. Further, the victim's rights movement is part of a broader movement of "Restorative Justice." Restorative Justice seeks to redefine crime itself as a conflict between the offender and his or her victim and the community, rather than the violation of a specific set of rules. It seeks to restore the parties and reconcile the relationships to bring about peace, rather than simply punish or treat the offender in isolation.<sup>5</sup> Relatively few jurisdictions have adopted a restorative justice model, especially outside of the juvenile justice system.<sup>6</sup>

It is difficult to evaluate the impact of victim's rights laws on victims. Even if duly notified, many crime victims choose not to exercise their rights to participate or to avail themselves of offered services. It is often difficult to determine whether or not their nonparticipation is a result of the quality of the invitation to participate or their genuine desire not to be involved. It is also difficult to ascertain if an individual victim's reported dissatisfaction with his or her treatment by the criminal justice system isn't simply a reflection of his or her disappointment with the case outcome that may have been largely beyond the control of the officials involved.

In an effort to assess the overall effectiveness of the Rhode Island victim's rights laws, the Justice Commission has commissioned the following needs assessment. The assessment attempts to describe "what is" in regard to victim's rights and services and "what should be" the desired state of affairs. Specifically, we will be looking at the gaps, duplications and solutions in regard to the delivery of victim services mandated by the state's victim's rights laws and Constitutional Amendment.

The assessment followed two tracks. First a survey was taken of 100 crime victims whose cases were prosecuted in the Rhode Island courts within the past several years. Second, a review was completed of current agency practices and procedures that addresses the implementation of victim's rights. The survey was conducted in an attempt to evaluate the effectiveness of the state to reach out to victims and provide them with satisfactory services. The review was completed to explore the state's strengths and weaknesses in achieving these goals.

---

<sup>5</sup> See, e.g., Van Ness, D. & Nolan, P. (Spring, 1998) Legislating for Restorative Justice, Regent University Law Review; Umbreit, M. & Carey, M. (March 1995) Restorative Justice: Implications for Organizational Change, Federal Probation.

<sup>6</sup> See, e.g., Klein, A. (1997). Alternative Sentencing, Intermediate Sanctions and Probation, Second Edition, Cincinnati, OH, Anderson Publishing Co., 361-367.

## **A. Historical Overview:**

In 1983, Justice Assistance, a non profit community based agency, established a pilot victim services project in the Providence District Court for victims of property crimes committed by defendants arrested in the City of Providence. The project notified select victims and assisted them in preparing restitution requests for subsequent court dispositions. Justice Assistance agreed to fund the program itself for the first year or so, pending an evaluation to be completed by Mary Hawkes, the chair of the social work department at Rhode Island College. If the program proved successful, the Supreme Court agreed to provide future funding.

The evaluation was completed. To the surprise of Justice Assistance officials, the study found many victims expressed dissatisfaction with the overall administration of justice notwithstanding the fact that they obtained court ordered restitution. Victims were particularly dissatisfied with the failure of the criminal justice system to keep them apprised of their related cases and invite their participation. The High Court subsequently agreed to fund Justice Assistance to continue to serve victims in the court, but asked that it expand its focus to include felony cases in Superior Court. Justice Assistance expanded its operations to Superior Court while continuing its program in the 6<sup>th</sup> Division District Court.

During the same period, Justice Assistance Director Jonathan J. Houston and Representative Jeffrey J. Teitz collaborated in the drafting of comprehensive victims' right legislation. It was filed and unanimously approved in both branches of the legislature and signed into law in 1983. Rhode Island became the third state in the nation to enact such legislation. Wisconsin was the first in 1980 and California followed in 1982. The California law passed as a result of an initiative petition, Proposition 8. The same year, Congress enacted its first federal legislation dealing with victim's rights, the Federal Victim and Witness Protection Act.

The original Rhode Island Victim's Bill of Rights was more limited than it is today. For example, while it introduced the right for victims to address courts at sentencing, it was limited to cases where the defendant was convicted after a trial by jury.

Three years later, Rhode Island led the nation by amending its Constitution to include an article guaranteeing victims' rights. The impetus for the amendment, drafted by Houston, Teitz and District Court Judge Robert K. Pirraglia, came out of the trial of Claus Von Bulow, accused of attempting to murder his wife, Sonny. Her children, Alexander VonAuersperg and Annie Laurie Isham, who, as crime victims were assisted by Justice Assistance, became active in the campaign for victim's rights and discussed with state officials the need for a federal victim rights Constitutional Amendment. State leaders decided the best way to proceed was to amend their own state constitution. Following Rhode Island, Florida and Michigan passed victim rights Constitutional Amendments in 1988 and Texas and Washington followed in 1989. Five more joined in 1992. Today, twenty-nine states have such Constitutional amendments.

The Rhode Island Constitutional amendment also incorporated the language in the legislative purpose section of the Victim's Bill of Rights. It expanded the right of victims to address courts after non-jury trials, plea bargains and the like and receive compensation from both perpetrators and the state.

Immediately after passage of the Constitutional amendment, the state legislature amended the Victim's Bill of Rights to include the establishment of a Victims' Service Unit by the Courts to implement the specific provisions.

The original blue print developed by the Rhode Island legislature called for the creation of a single victims' services unit to serve all victims in all courts. That blue print was never realized. Instead, the Court, charged with establishing a victims' service unit (§12-28-9), contracted in 1988 with a second agency, the Rhode Island Coalition Against Domestic Violence, to serve domestic abuse victims. That same year, the legislature enacted legislation creating a "domestic abuse court advocacy project" (§12-29-7). By contracting with the Coalition, the Court partially fulfilled both legal mandates. It provided the majority, but not all victims of domestic assault and related crimes, with advocates to implement many of the services mandated by the Victim's Bill of Rights (§12-28-1 et. seq.). However, the contract did not provide for Coalition advocates to assist victims of felony domestic violence handled in the Superior Court despite the fact that this is mandated by the domestic violence prevention act (§12-29-1 et. seq.).

In 1986 a newly elected state Attorney General, Arlene Violet, fought to locate the victim services unit within her office. Although legislation to that effect was not enacted into law, the Attorney General's Office secured Victims of Crime Act (VOCA) grant money to establish a "victim as witness" program within her office. As originally established, this unit was not a generic victim services provider. Eventually, however, as the Victim Witness Project developed, it evolved into a more general victim service provider. In recognition of this, it officially changed its name in 2000 to "Victims' Service Unit," omitting "Witness" from its title. "Victim/Witness Assistants" were renamed "Victim Advocates."

In recognition of its role as victim's service provider, in 1989, officials from Justice Assistance, the Attorney General's Office, the courts and the legislature developed an on-going arrangement resulting in the division of felony case victim services between Justice Assistance and the Attorney General's Office. Justice Assistance now serves victims involved in non-capital cases and the Attorney General's Office serves those involved in capital cases as well as all felonies scheduled for trial. In addition, the Attorney General's Office, with additional VOCA funds, expanded their services to cover all bail cases heard in the District Court.

The two agencies operate similarly in the provision of victim notification and immediate services although they are responsible to different agencies located in different branches of government. Justice Assistance employees work under contract to the judicial branch of government. The Victims' Service Unit staff is responsible to the Attorney

General located in the executive branch of government. However Justice Assistance case managers acknowledge that they also commonly act as “agents” of the state prosecutors.

In 1998, the District Court requested that Justice Assistance expand its operations to all District Courts for the purposes of handling cases “filed” at disposition. In regard to these cases, Justice Assistance is responsible for notifying victims of the case disposition, collecting and disbursing court ordered restitution and monitoring offenders ordered to complete specific programs such as batterer intervention or community service work.

Also in 1998, the Rhode Island Supreme Court ruled on *Bandoni v. Rhode Island*. Mr. and Mrs. Bandoni were in a car hit by defendant Richardson. A police administered Breathalyzer revealed that Richardson had twice the level of alcohol in him as legally permissible to operate a motor vehicle. While Mrs. Bandoni suffered only minor injuries, Mr. Bandoni was severely injured, including a fractured pelvis. The Bandonis cooperated with the Coventry police at the scene and asked to be kept apprised of the pending case against Richardson. Ten days later, on August 12, 1992, Richardson was arraigned in the Third Division of the District Court. On September 23, as a result of plea bargain worked out with the solicitor, he was allowed to plead *nolo contendere* to reduced charges of reckless driving. He was sentenced to one year’s unsupervised probation and a fee of \$250 to be paid to the state’s victim indemnity fund as well as some court costs. He was allowed to maintain his driver’s license. Neither the police, the solicitor nor a representative of the Court’s Victims’ Services Unit notified the Bandonis of the hearing. As a result, the Bandonis did not get a chance to comment on the plea bargain, disposition, or to request restitution from the defendant.

The Bandonis did not discover the case had been heard until informed by a lawyer hired by them to pursue a civil claim against Richardson. The couple then sued the City and eventually the State and their agents for their failure to notify them as required by the state law and Constitution. In a split decision, the High Court ruled that the Bandonis had no cause of action against the City or State for negligence arising from either the Victim’s Bill of Rights or the Victim’s Rights Amendment to the state Constitution. Specifically, the majority ruled that there was no common law right to victim notification and the statutory enactment of victim’s rights did not include any statutory authority to sue for damages. Further, it ruled that the Constitutional amendment is not self-executing, as it expressed only “general principles,” even though the principles are expressed in mandatory terms. While it in “no way condone(d) the officials’ failure to notify victims of their rights,” it found no legal monetary remedy available to the Bandonis for the officials’ failure. While the majority left open the possibility of non monetary remedies for future victims’ rights violations, it expressed its frank concern for legislative tampering with judicial and prosecutorial immunity, long recognized in law.<sup>7</sup>

The Court majority noted that none of the other states with similar Constitutional victim’s rights guarantees provided for civil liability for deprivation of these rights, with

---

<sup>7</sup> *Bandoni v. State of Rhode Island*, 715 A.2d 560, 595 (1998).

half leaving it up to their state legislatures to craft specific statutory remedies.<sup>8</sup> The Court also explained while both it and the United States Supreme Court can order damages without specific statutory authority for violations of specific rights, the rights must be self executing, unlike the state's Victims' Right Amendment. The Rhode Island legislature, according to the majority, had specifically rejected a provision that would have added a liability section to the Constitution or state law. Instead, it enacted the legislation establishing the Court's Victims' Service Unit.

In a blistering dissent, Justice Flander declared: "For crime victims in particular, this day will doubtless live in legal infamy."<sup>9</sup> The majority decision, he declared, "neutered" the Constitutional rights granted crime victims by the "Court's abject unwillingness to enforce its provisions."<sup>10</sup> As a result, the Bandonis, he concluded, had been "thrice victimized:" first by the drunk driver; second by the officials who allegedly failed to provide them with notice that would have allowed them to exercise their right to present the impact of the crime at the court hearing; and third by the state's Highest Court.<sup>11</sup> The ruling makes crime victims' rights "inconsequential because... there are no legal consequences for those who violate crime victims' rights," in effect, "immunizing the violators against the consequences for their illegal actions."<sup>12</sup>

While the majority had alluded to the state legislature's action the day after the Constitution amendment was passed to create the victims' service unit within the courts to carry out the provisions of the amendment and statutory Victim's Bill of Rights, Flander maintained: "But this is the same victims' service unit that has allegedly failed miserably in providing the Bandonis with their Constitutional right to address the Court before the criminal that injured them was sentenced to a slap-on-the-wrist fine! What the majority seems unable to grasp is that the legislation and Constitutional allotment of ... protections for crime victims is totally meaningless unless and until those rights become legally enforceable."<sup>13</sup>

The majority did caution that "(o)ur holding today, however, should in no way be construed by those charged with informing crime victims of their rights that this Court considers these rights to be inconsequential or that this Court minimizes the importance of the official's obligations to comply with the statute conscientiously."<sup>14</sup> The Court also pointed to legislation enacted in Arizona as a possible model for the future action. The Arizona law enacted to implement that state's constitutional victims' rights mandate, specifically provides that victims have a cause of action for damages.<sup>15</sup>

Notwithstanding the High Court's ruling or the concerns expressed in the dissent, the Legislature has not provided for any specific remedy for crime victims deprived of

---

<sup>8</sup> See, e.g., Mich. Const. art. 1 §24(2); Neb. Const. art. 1 §28.

<sup>9</sup> At 601.

<sup>10</sup> At 603.

<sup>11</sup> At 604.

<sup>12</sup> At 604.

<sup>13</sup> At 606.

<sup>14</sup> At 595.

<sup>15</sup> Ariz. Rev. Stat. Ann. §13-4437 (Supp. West 1997).



their rights. Further, despite the admonition of the majority, court administrators have taken no major action to expand its victims' service unit to insure future victims be afforded their rights.

While it was the intent of the original authors of the Victim's Bill of Rights that the various agencies would work together to implement its provisions, what has actually developed is a number of separate entities working fairly independently, each from its own victim information system. The Court has not established one victims' services unit to serve all the courts and provide the services mandated by law to all crime victims. Approximately half of all non-domestic crime victims, predominantly victims of misdemeanor property crimes receive no services from any of these court-based agencies. In 1999, there were more than 2,000 non-domestic violence assaults brought before the District Court as well as thousands of property and theft related crimes. As of today, if the Bandonis were re-injured by another drunk driver, the chances are they would still not be informed of the requisite hearing dates so that they could appear before the court at sentencing.

In addition, specific categories of victims, singled out by statute as deserving special recognition, including victims of domestic abuse, relatives of homicide victims, elderly and child victims, do receive victim services, but not necessarily from victim service staff specifically trained to serve them. For example, the victims of the most serious cases of domestic violence committed by the most chronic abusers receive services from Justice Assistance and the Attorney General's Victims' Services Unit staff not advocates from the Rhode Island Coalition Against Domestic. In order to compensate in part for the current gap in services, the Attorney General's special domestic violence prosecution unit has hired a full time non-attorney to work specifically with victims of domestic violence. The person hired had previously worked for the Coalition as a domestic violence victim advocate!

Similarly, as a result of recent efforts by the Attorney General's Victims' Services Unit, relatives of victims of homicide receive written notice of their special rights and services as soon as the Unit identifies them. At the same time, a Justice Assistance program funded by VOCA specially designed to serve relatives of homicide victims operates independently, relying on newspaper accounts and other sources to reach out to the relatives. Its staff consists of individuals and survivors with special training and/or experience in the field.

On the other hand, the state's Child Advocacy Center provides a national model program provides services and protects the rights of victims of child abuse. A trained team of experts from a number of different disciplines has been assembled to accomplish this task.

There is substantial overlap in cases among the three court-based victims' services agencies. As a result, victims may have multiple court-based victim's services providers on the same case as it progresses through the court system. For example, a victim of misdemeanor domestic violence might first be contacted and served by an advocate from

the Rhode Island Coalition Against Domestic Violence after arraignment. Then, if the case is appealed to Superior Court, the Attorney General's Victims' Services Unit will contact and serve the same victim. If the same case is disposed of through a filing in the District Court, the victim will likely receive a letter regarding the disposition from both the Coalition and Justice Assistance.

Similarly, the victim of a non-capital felony will be notified and served by a Case Manager from Justice Assistance after arraignment. However, if the defendant goes to trial, the same victim will be contacted and served by a representative of the Attorney General's Victims' Services Unit. The victim is likely to receive another letter from Justice Assistance informing him or her of the next scheduled hearing date. And finally, s/he may receive a letter from the Victims' Services Unit to inform him/her that the hearing has been rescheduled.

Any victim may have also been notified and served by 46 different law enforcement agencies before the initial case arraignment. Several police departments have their own court-based victim advocates who also contact victims and provide services in the District Courts. In addition, if the defendant is held temporarily in an adult correctional institution and is then released before conviction, the victim is also notified by the Attorney General's Victims' Services Unit whether or not the victim is also being served by Coalition Advocates or Justice Assistance Case Managers. If the defendant is subsequently sentenced to imprisonment, the victim will also be notified and served by the Parole Board and/or the Department of Corrections Office of Victim Services. The former will inform them of parole hearings and any subsequent release on parole. The latter will inform those who request it about non-parole releases, including furlough, work release, escape and death.

Each of these agencies has developed or has attempted to develop its own database containing requisite victim, defendant and case information. These databases are generally not linked and are not accessible outside of their implementing agencies. Information, in the form of hard copies of the letters sent to victims, is shared among agencies. For example, Justice Assistance provides the Attorney General's Victims' Services Unit with copies of letters sent to non-capital felony victims informing them that their cases are being transferred to the Victims' Services Unit. The Victims' Services Unit, similarly, provides the Parole Board with copies of letters it sends to victims at disposition when offenders have been sentenced to imprisonment.

The basic and seemingly simple task of providing routine, timely periodic notice to victims as to the status of their cases as they progress through the criminal justice system has proven problematic. The number of different agencies assigned to provide victim notification and their failure to communicate and cooperate with each other accounts for only part of the problem. A second part of the problem is that the criminal justice system has not altered its basic offender-oriented record keeping system to include basic victim information.

As a result, as a case progresses through the criminal justice system, agencies required to inform victims must rely on the original contact information maintained by disparate local police agencies in order to construct their own victim-related record keeping system. Further, each new victim record becomes more inaccurate as the original victim information ages. By the time, for example, the case reaches the Parole Board, the majority of victim addresses initially obtained by the police are incorrect. In January 2001, the Board mailed 223 letters to victims pursuant to its statutory obligation to notify victims 30 days in advance of an inmate's parole hearing. More than half of these letters (n=113) were returned by the U.S. Postal Service.

The consequences of the consistent inability of the state to identify and maintain contact with crime victims compromises its ability to provide crime victims with the rights and services due them by law at all stages of proceedings. It robs victims of restitution due them by their offenders, even when the offenders pay restitution ordered by the court. It compromises victim safety by allowing potentially dangerous offenders to be released from prison without advance warning. And at all stages, it deprives victims of meaningful participation in the criminal justice system including the basic right to tell their stories to key actors in that system, including victim advocates, prosecutors, defense attorneys and judges as well as correctional and parole officials.

For example, every year, Justice Assistance and the Court's Central Registry, both charged with collecting and disbursing court ordered restitution to crime victims, turn over thousands of dollars in payments to the State Treasurer because victims could not be located to receive the payments. Further, every year, more than a thousand inmates are released from prison pre-trial. While most of their victims are warned by the Victims' Service Unit of the Attorney General in compliance with the letter of the law, by the time the Unit tracks down the names and addresses of the victims, the notifications are received days after the inmates' actual release. The lack of timely notice deprives vulnerable victims of any chance to take precautionary measures to protect themselves.

The inability of the state to maintain contact with crime victims also compromises the administration of justice and the rights of defendants in the state. The lack of meaningful participation of most crime victims makes it more difficult for the system to understand the full impact of the crime and hold the defendant accountable for it. Even defendants who are sentenced to imprisonment are adversely effected. Before they may participate in work release, for example, the Department of Corrections must notify their victims. The inability of the Department to notify victims has kept eligible inmates from participating in the program.

Although the above discussion has focused primarily on victims whose perpetrators have been arrested and prosecuted, in the vast majority of cases in Rhode Island, eligible victims' perpetrators are not arrested. The limited rights guaranteed these victims, principally notification "no less frequently than every three months by law enforcement authorities of the status of the investigation until the alleged perpetrator is apprehended or the investigation is closed," however, is rarely complied with, according to police officers.

Despite many obstacles and barriers, victim service providers, thanks to their commitment and hard work, are exerting exemplary efforts to service thousands of victims every year. At every turn, their efforts are made more difficult by limited resources, contractual and legal limitations, a largely indifferent criminal justice system, exacerbated by the very complexity of the Rhode Island criminal justice system. Rhode Island is one of the last states that continues to maintain an archaic *de novo* system, allowing automatic appeals to Superior Court for all misdemeanor cases, threatening victims with the need for having to go through the process twice and delaying case resolution for months.

In many respects, victim advocates function like donated organs transplanted into a sick patient. At the same time they are vital to keeping the patient healthy, they are attacked by the patient's immune system as an unwelcome invader. At the same time the criminal justice system needs the services of its victim service providers to insure that it can administer justice, it instinctively resists their efforts to work with victims in securing their rights.

## **B. Analysis of Rhode Island Victims' Rights**

In order to insure that the state of Rhode Island fulfills its responsibility to victims of crime, Rhode Island legislators amended the State Constitution in 1986 to guarantee victim rights, previously provided, in part, by statute. Article 1, §23. "Rights of the Victim" provides:

A victim of crime shall, as a matter of right, be treated by agents of the state with dignity, respect and sensitivity during all phases of the criminal justice process. Such person shall be entitled to receive, from the perpetrator of the crime, financial compensation for any injury or loss caused by the perpetrator of the crime, and shall receive such other compensation as the state may provide. Before sentencing, a victim shall have the right to address the court regarding the impact which the perpetrator's conduct has had upon the victim.

The language of the amendment incorporates that of the previously enacted state Victim's Bill of Rights. The latter also mandates that victims be treated with "dignity, respect, and sensitivity" at all phases of the criminal justice process. In addition, it requires that victims receive financial compensation for their injury or loss caused by the crime "whenever possible," and the "full impact" of that crime is brought to the attention of the court if their perpetrators are brought to court (§12-28-2 (1), (2), (3).

### **Rhode Island Victim's Rights**

<b>Rights Section</b>	<b>Victim's Right Legislative Purpose</b>
12-28-2(1)	Treat crime victims with dignity, respect & sensitivity at all phases of criminal justice process
12-28-2(2)	Where possible, financial compensation from perpetrator
12-28-2(3)	Full impact of crime brought to attention of court

In order to insure that the above purposes are realized the Victim's Bill of Rights enumerates the following specific mandates.

### **Rhode Island Victim's Rights**

<b>Rights Section</b>	<b>Victim's Right</b>
12-28-3(1)	To be notified at least every 3 months of the status of the investigation until the perpetrator is apprehended or the case closed.
12-28-3(2)	To be notified of the arraignment of the perpetrator and informed of the release of the perpetrator on bail or personal recognizance
12-28-3(3)	To receive protection from harm and threats arising from victim cooperation
12-28-3(4)	To be notified of all court proceedings in a reasonable amount of time, and notified of all cancellations
12-28-3(5)	Be provided with a secure waiting area during court proceedings
12-28-3(6)	To be informed of the procedure to be followed to apply for witness fees to which the victim is entitled.
12-28-3(7)	To be provided with appropriate employer intercession services
12-28-3(8)	To have stolen or other property returned when no longer needed as evidence.
12-28-3(9)	To be informed of financial assistance and other social services that may be available
12-28-3(10)	To be consulted by the administrator of probation and parole for pre-sentence reports and to have included in the report a victim impact statement
12-28-3(11), (14) 12-28-4, 4.1, 4.2, 4.3	To be afforded the right to address the court in cases where there is a guilty verdict.
12-28-3(12)	To be informed of the disposition of the case against the alleged offender.
12-28-3(13)	To be notified in felony cases, whenever the defendant or perpetrator is released from custody, pre conviction, by parole, and other.
12-28-3(15)	To be notified of the right to request that restitution be an element in the final disposition of the case.
12-28-5, 5.1	The court shall notify the victim of the entry of the civil judgment and that the victim will have to establish injury or loss.
12-28-9	Child victims (Parents, guardians, etc.) shall be provided information about and referrals to appropriate social service agencies.
12-28-6	Right to address parole board
12-28-10	Bar on employment discrimination by victims of domestic abuse
12-28-11	Notification to immediate family members of homicide victims of various hearings, trial dates, case disposition, etc.

There is some variance between the broader language of the Constitutional Amendment, the legislative purpose listed in §12-28-2 and the specific provisions of the Victim's Bill of Rights. The wording of the Amendment states that victims are "entitled to receive" restitution from the perpetrator of the crime. The legislative purpose of the victim's bill of rights states "(t)hat whenever possible (victims) receive financial compensation for their injury or loss from the perpetrator of the crime." Yet the specific provisions that follow only require prosecutors to inform victims of their "right to request that restitution be an element of the final disposition of a case." In fact, the only statutory mandate for restitution is limited to "any person who sells, causes to be sold, or otherwise delivers or causes to be delivered any stolen article or metal to a person licensed pursuant to chapter 11.1 of title 6."<sup>16</sup> In effect, the substantive right to restitution suggested by the Amendment and purpose section of the Victim's Bill of Rights is actually a procedural right of victims to be informed of their right to request it in court. Whether or not prosecutors recommend and judges impose restitution is, in reality, discretionary.

Other victim rights are contingent upon the victim specifically claiming said rights. In this respect, these rights are analogous to the federal Constitutional Right to a speedy trial (6<sup>th</sup> Amendment), as opposed to, for example, the right of free speech (1<sup>st</sup> Amendment). Defendants must specifically request their right to a speedy trial before it attaches.

In Rhode Island, for example, while the Department of Corrections is required to give notice to the victim of the perpetrator's release in certain circumstances, the requirement is limited to cases where the victim first registers his name and address with the Department (§12-28-4(13)). The rights of relatives of homicide victims to be notified of "the pendency of a bail hearing, pre-trial, trial or disposition relating to a party accused of the homicide" is limited to "those immediate family members who have filed a request with a court which has asserted jurisdiction over the accused/defendant" on forms promulgated by the Attorney General (§12-28-11(b)). Similarly, prior to acceptance by the court of a plea negotiation and imposition of sentence, the victim of the criminal offense has the right to address the court regarding the crime impact. However that right is conditioned upon the victim requesting it (§12-28-4.1). Finally, prior to acting upon a parole petition, the victim has the right to address the parole board regarding the crime's impact on the victim, however, the right is contingent upon the victim requesting it.

Even where there is no statutory requirement that victims specifically request a specific right, many agencies interpret various victim rights as attaching only when victims' request them. For example, the Warwick Police Department has taken more steps to conform to the statutory requirements of the Victim's Bill of Rights than any other law enforcement agency in the state. Officers ask victims at the scene of the crime whether or not they want to be notified of court proceedings. Only victims who request it are notified of the arraignment of the person accused of perpetrating the crime against them. According to police, most victims choose not to be contacted.

---

<sup>16</sup> §12-19-32.1.

On the other hand, the Parole Board regularly sends letters to victims in attempting to notify victims of inmates released on parole. These letters are sent despite the fact that a large number of the letters are expected to be undeliverable because earlier letters sent to the same addresses notifying the victims of their right to appear for parole hearings have already been returned!

The Rhode Island Victim's Bill of Rights creates different classes of victims. Each class is entitled to varying rights. Generally, the rights of crime victims increase as the perpetrators' cases advance through the criminal justice system. As rights increase, the number of victims affected decreases.

Following, the rights afforded each class of victim are broken down along with an estimate of population size of each class based on current statistics and/or reports.

## **I. Victims Not Entitled to Rights**

Victims of crime are limited to the direct victims of the crime or, in cases of homicides, "immediate" family members. Generally, a "victim" is one who has sustained personal injury or loss of property directly attributable to the criminal conduct with which the defendant has been charged (see, e.g., §12-28-4.3 (a).) An "immediate" family member of a homicide victim means a spouse and any dependent children of the victim as well as a person whom is related to the victim "whether by blood, adoption or marriage (§12-28-11(a))."

The Victim's Bill of Rights, however, only applies to a crime victim "who makes a timely report of the crime and who cooperates with law enforcement authorities in the investigation and prosecution of the crime against him or her (§12-28-3 (a))."

This qualification eliminates, for example, a substantial number of crime victims in the state of Rhode Island who fail to report their victimization. While it is beyond the scope of this assessment, if Rhode Island victims are reflective of crime victims found across the country, this number includes 65 % of all crime victims, including 58% of victims of violent crime. Given the number of victim-related crimes reported to police in Rhode Island, we can estimate that unreported crimes involving victims in the state probably exceeds a quarter million. In other words, at the outset, a quarter of a million victims of crime fall outside the provisions of the state's Victim's Bill of Rights.

## **II. Victims Entitled to Pre-Arrest Rights Only**

Even if the victim reports the crime, not all offenders are arrested and/or prosecuted. In regard to these cases, victim rights are limited to those enumerated below.

### Pre-Arrest Victim's Rights

<b>Rights Section</b>	<b>Victim's Right</b>
12-28-3(1)	To be notified at least every 3 months of the status of the investigation until the perpetrator is apprehended or the case closed.
12-28-3(3)	To receive protection from harm and threats arising from victim cooperation
12-28-3(9)	To be informed of financial assistance and other social services that may be available

Although limited, latter notification may be of particular importance to these crime victims. If their perpetrators are not apprehended or convicted, the court cannot order them restitution paid by the defendant. If the perpetrators cannot be located, the victims cannot sue for civil damages. The only financial assistance for which victims may be eligible is state victim compensation. In order to receive it, however, victims must apply for compensation within a year of the crime. Unfortunately, certain benefits, including, for example, emergency burial expenses, may be needed immediately by family members of homicide victims who cannot themselves afford these expenses.

Most crime victims who report their crimes fall within this category of victim rights recipients as the following chart of index crimes maintained by the Rhode Island State Police documents.

### Index Crime Cases For 1999: Arrests and No Arrests

<b>Index Crimes</b>	<b>Number of Reported Offenses</b>	<b>Arrests*</b>	<b>No Arrests</b>
Murder	36	29**	7
Rape	391	134	257
Robbery	786	246	540
Assault (felony)	1,628	779	849
Burglary	6,341	787	5,554
Larceny- Theft	22,292	3,192	19,100
Motor Vehicle Theft	4,032	466	3,566
<b>Total</b>	<b>35,506</b>	<b>5,631</b>	<b>29,866</b>

\* Includes arrests of adults (18 and over) and juveniles (under 18).

\*\* Includes arrests for both murder and manslaughter.

The above chart does not represent the number of individual victims or suspects involved in each case listed. One offender, for example, could be responsible for multiple cases. In addition, one case may involve multiple victims. Also, there may be victims in crimes that on their face appear victimless, such as “reckless driving” that are not included in the above listing. In the previously cited *Bandoni* case, for example, the State’s highest court made clear that “victims” are defined by the Victim’s Bill of Rights, not the charging complaint.<sup>17</sup>

However, the above case numbers suggest the magnitude of the numbers of offenders and victims involved. As the above chart indicates, for example, there were 36

---

<sup>17</sup> At 612.



murder cases. That same year 27 juveniles and adults were arrested for murder or manslaughter. While some of these arrests may have been for murders committed before 1999, it suggests that in most cases, the alleged suspect was arrested. The arrest rate declines precipitously in regard to other index crimes, especially for property crimes. As a result, it appears that the victims of at least 30,000 Rhode Island index crimes are entitled only to pre-arrest rights as enumerated above because no arrests have occurred in these cases, at least during the year the case was reported.

In regard to domestic violence and sexual assault cases tracked by the Domestic Violence Training and Monitoring Unit (§12-29-6.1) there were similarly more reports filed than arrests made as the following chart documents.

**Number of Domestic Violence and Sexual Assault Reports, Arrests and Open Investigations, 1999\***

<b>Crimes</b>	<b>Reports Filed</b>	<b>Arrests</b>	<b>Under Investigation</b>
Sexual Assaults	262	186	25
Domestic Violence	7,223	5,706	37
<b>Total</b>	<b>7,485</b>	<b>5,892</b>	<b>62</b>

\* From Domestic Violence Training and Monitoring Unit

**III. Victims Entitled to Post Arrest and Pre Conviction Rights**

Victims whose alleged perpetrators are arrested are entitled to the same enumerated rights as the first class of victims as well as a constellation of the other rights listed below.

**Basic Victim's Rights Where Arrest Made**

<b>Rights Section</b>	<b>Victim's Right</b>
12-28-3(2)	<b>Notification Rights</b> To be notified of the arraignment of the perpetrator and informed of the release of the perpetrator on bail or personal recognizance
12-28-3(4)	<b>Notification Rights</b> To be notified of all court proceedings in a reasonable amount of time, and notified of all cancellations
12-28-3(5)	Be provided with a secure waiting area during court proceedings
12-28-3(6)	<b>Notification Rights</b> To be informed of the procedure to be followed to apply for witness fees to which the victim is entitled.
12-28-3(7)	To be provided with appropriate employer intercession services
12-28-3(8)	To have stolen or other property returned when no longer needed as evidence.

**IV. Victims Entitled to Rights for Successfully Prosecuted Cases**

Although a defendant is arrested, prosecutors have discretion to drop cases and/or judges may dismiss them. In addition, some defendants are found not guilty after trial. The below rights attach only for victims where prosecutors decide to prosecute. Most of these rights attach only if the defendant is then found to have committed the crime and is sentenced.

#### Basic Victim's Rights Where Cases Prosecuted and Sentenced

Rights Section	Victim's Right
12-28-3(15)	<b>Notification Rights and Restitution</b> To be notified of the right to request that restitution be an element in the final disposition of the case.
12-28-5.1	If defendant ordered restitution, civil judgement to enter for amount owed.
2-28-3(11) 12-28-4 12-28-4.1 12-28-4.2 12-28-4.3	<b>Rights at Offender Sentencing</b> To be afforded the right to address the court in cases where there is a guilty verdict.  Family Member may speak for child victim/ incapacitated victim Victims of misdemeanors rights based on judicial determination
12-28-3(14)	<b>Rights at Offender Sentencing</b> To be afforded the opportunity to make a written statement prior to the acceptance of a plea negotiation, forwarded to parole board.
12-28-3(12)	<b>Notification Rights</b> To be informed of the disposition of the case against the alleged offender.
12-28-5.1	If the defendant ordered to pay restitution, notified that civil judgement entered against defendant for nonpayment.

In Rhode Island, most defendants who are arrested are subsequently prosecuted. However, in 1999, almost 5,000 cases were dismissed. Many of these cases may have had one or more victims. This means that these victims' rights were limited to the right to be notified of the case dismissal (§12-28-3(12)).

#### Cases Dismissed in 1999

Court	Number of Prosecutions	Number of Dismissals
Superior	6,149	470
District	24,504	4,166
Total	30,653	4,866

That same year, it appears there were 25,000 other cases that involved victims for which the victims were eligible for prosecution and sentencing rights listed above.

## Number of Cases Where Victims Entitled to Prosecution/Sentencing Rights, 1999<sup>18</sup>

UCR and Domestic Violence Crimes	Arrests*
Murder	25
Rape	116
Other Sexual Assaults, 1 <sup>st</sup> & 2 <sup>nd</sup> degree	131
Child Molestation, 1 <sup>st</sup> and 2 <sup>nd</sup> degree	310
Robbery	151
Assault	637
--- Domestic Violence Felony Assault	--- 332
Burglary	458
Larceny- Theft	2,064
Motor Vehicle Theft	237
Assaults	4,651
--- Domestic Violence Assaults	--- 3,043
--- Domestic Violence Sexual Assaults	--- 39
Arson	41
Forgery	155
Fraud	929
Embezzlement	93
Stolen Property	335
Vandalism	956
--- Domestic Violence Vandalism	--- 712
Disorderly Conduct	1,937
-- Domestic Violence Disorderly	--- 880
Violating Restraining Order	409
Violating No Contact Order	296
All Other Crimes	11,700
<b>Total</b>	<b>24,969**</b>

\* Includes only arrests of adults, 18 years or older.

\*\* Excludes generally victimless crimes of weapons possession, prostitution, drugs, gambling, drunkenness and drunk driving.

Administratively, as discussed in the introduction to this report, the Victim's Bill of Rights establishes a victims' services unit within the state court system responsible for assisting victims in superior, district and family courts to be administered by the state court administrator through the administrative office of the state courts. The law allows the court to contract out to non-court agencies to satisfy this mandate. In determining the allocation of resources, the unit is mandated to give preference to homicide victims' immediate families and victims suffering personal injury.

### V. Victims Entitled to Post Disposition Rights

In addition to all the other rights afforded crime victims whose offenders have been arrested, and prosecuted successfully, victims of incarcerated offenders have additional rights.

<sup>18</sup> The Uniform Crime Report Crimes were obtained from the State Police and the Domestic Violence Crimes were obtained from the Domestic Violence Training and Monitoring Unit.

### **Victim's Rights of Incarcerated Perpetrators**

<b>Rights Section</b>	<b>Victim's Right</b>
42-56	Notification of inmate placed on work release
12-28-3(13)	Upon request, non parole releases from ACI
12-28-6(e)	Notification 30 days in advance of parole hearing
12-28-6(b)	Address parole board
12-28-3(13)	Notification of release on parole

If the Department of Corrections wishes to allow the inmate to participate in work release, it must notify the victim. The Department of Corrections must notify the victim, if the victim requests it, when the inmate is furloughed, transferred out of state, escapes, dies or is released after serving his or her sentence. This right is limited to felony cases.

### **Inmates Released in 2000**

<b>Inmates</b>	<b>Number</b>
Total	15,743
Pre conviction	11,700
Post conviction	3,223
Civil purge	820

The Parole Board saw 1,651 inmates in 2000 and released 519 on parole. While inmates have a right to parole after serving one third of their sentence, by policy the Board will not parole select offenders such as sex offenders until they have served two thirds of their sentence. Inmates sentenced to six months or less are not eligible for parole. The Board is only mandated to inform victims when inmates are granted parole.

## **VI. Additional Rights for Victims of Felony Crime**

Certain categories of victims have additional rights either based on types of victimization or characteristics of the victims. Victims of felonies receive the additional rights charted below.

### **Felony Victim's Rights**

<b>Rights Section</b>	<b>Victim's Right</b>
12-28-3(10)	Pre-sentence Reports
12-28-3(13)	Notification of Release from ACI pre/post conviction
12-28-4.1	Right to address court before plea accepted
12-28-5	Civil judgement entered against defendant

Victims of misdemeanors also may address the court before a plea is accepted unless the judge determines that the victim's presence would substantially interfere with the court's ability to administer justice (§12-28-4.3). Pre-sentence reports are only mandated in felony cases (§12-19-6). Finally, the court is required upon final conviction of a felony after a trial by jury to enter a civil judgement against the defendant conclusively establishing his or her liability to the victim for injury and loss of property.

Most of the crimes for which defendants are charged and arrested are misdemeanors. There are, as the following chart illustrates, more than four times as many misdemeanor cases prosecuted in Rhode Island than felony cases.

#### **Felony v. Misdemeanor Cases, 1999**

<b>Court</b>	<b>Felony</b>	<b>Misdemeanor</b>
<b>Superior Court</b>	5,674	746
<b>District</b>	0	24,504
<b>Total</b>	5,674	25,250

### **VII. Rights for Victims Whose Perpetrators Convicted After Trial**

The following two rights are afforded victims only if the perpetrators' cases went to trial before a judge or jury.

#### **Victim's Rights After Trial**

<b>Section Rights</b>	<b>Victim's Right</b>
12-28-4	Right to address court
12-28-5	Civil Judgement after trial by jury

Although these rights are limited to victims after a trial by judge or jury, §12-28-4.1 gives the same rights to address the court in cases where the defendant pleads guilty or *nolo contendere*. §12-28-5.1 broadens the eligibility to all victims to have civil judgement orders if restitution is ordered and then not paid in full.

#### **Convictions After Trial**

<b>Crime</b>	<b>Number</b>
Misdemeanors	245
Felonies	76
Total	321

### **VIII. Rights for Victims Based on Victim or Crime Characteristics**

#### **1. Victims of Domestic Violence**

Victims of domestic violence are granted additional rights as part of the Victim's Bill of Rights listed below. They are also given specific rights pursuant to the Domestic Violence Prevention Act, passed July 1988 and revised as recently as February 8, 1999 (§12-29-1 et. seq.). Domestic violence crimes include, but are not limited to, simple assault, felony assault, vandalism, disorderly conduct, trespassing, kidnapping, child snatching, sexual assault, homicide, violation of protective orders (§§15-15-1 et seq., 15-5-19 or 8-8.1-1 et seq.), and stalking (§12-29-2 (a) (1-11)).

### Domestic Violence Victim's Rights

Rights Section	Victim's Rights
12-28-10	Bar on discrimination for seeking or not seeking protective order
12-29-3	Assistance from Police <ul style="list-style-type: none"> <li>- Obtain medical treatment</li> <li>- Notice of right to obtain protective order</li> <li>- Inform re. victim services</li> <li>- Safety at scene</li> <li>- Information of charge filing</li> </ul>
12-29-4	Copy of No Contact Order when offender arrested
12-29.8.1	Copy Upon request
12-29-5.2 (regulations)*	-Warning of credible threat from batterer in treatment

\*Batterers Intervention Program Comprehensive Standards (8/4/98)

Domestic violence offenses constitute a large minority of all misdemeanor and sexual assault cases according to statistics maintained by the Domestic Violence Training and Monitoring Unit. In addition to victims of domestic violence who come to the system's attention because of the arrest of their abuser, over 3,500 come to District and Family Court to secure civil protective orders against their abusers. Violations of these orders constitute a crime.

### Domestic Violence Cases in 1999

Domestic Violence Crime	Number of Arrests
Felony Assault	332
Simple Assault	3,043
Disorderly	880
Vandalism	712
Trespass	7
Violation of Restraining Order	409
Violation of No Contact Order	296
Stalking	49
Homicide	0
Sexual Assault	39
Other	15
Secured Protective Order	3,562
<b>Total</b>	<b>8,132</b>

In addition, there are many other victims of domestic violence who do not come to police attention, do not apply for protective orders and are not included in the above chart.

## 2. Family Members of Homicide Victims

The Immediate family members (e.g. spouse, dependent children, persons related by blood, adoption or marriage) of homicide victims are also entitled to specific rights. In addition to the other enumerated rights, they are entitled to reasonable written or oral notification from the Office of the Attorney General of the pendency of a bail hearing,

pre-trial, trial, or disposition relating to the accused party and said notice shall be provided at least 48 hours prior to the hearings. To receive the required notices, the victims must file a request with the court on forms promulgated by the Attorney General.

### **Rights of Homicide Family Members**

<b>Rights Section</b>	<b>Victim's Right</b>
12-28-3(b)	Immediate Family Members get same rights as other crime victims
12-28-11	<b>Notification Rights</b> 48 hour advance notice of all hearings thru disposition if family members file request
12-28-6	<b>Parole Rights</b> Notification for next of kin to provide victim impact statement to Parole Board

In 1999, state police reported 36 murder cases. The number of immediate victim family members is obviously greater. Although relatively few homicides are committed each year, each victim may leave behind multiple immediate family members. Although a form is provided for family members to request notification of hearings, the Office does not track the number of forms filed and does not know the number of homicide victim family members served or the percentage of members who seek notification.

### **3. Children Victims**

Finally, children under the age of 15 are given special rights to minimize the impact of their involvement with the criminal justice system. Child victims of felony offenses or delinquent acts that would be considered felony offenses if committed by an adult, have the following rights:

- to have the system explained to them,
- to be accompanied by a parent or guardian,
- to have their involvement minimized as much as possible,
- to testify at proceedings in a manner to reduce trauma
- to be referred to appropriate services for assistance.

### **Rights of Child Victims**

<b>Section Rights</b>	<b>Victim's Right</b>
12-28-9	System explanations, accompaniment by parent, minimal involvement, non-traumatic testimony, referrals for counseling
12-28-6	Right to provide victim impact by parent or legal guardian

The number of child victims is not known. There is some indication that suggests there are relatively few. No child victims 15 or younger, for example, received services from Justice Assistance in June, 2000, either indicating no such victims were involved in non capital felony cases or Justice Assistance was unable to identify children among its

victims served. In 1999, we know, however, that 310 offenders were arrested for child molestation.

### **C. Agencies Responsible for Rights Provision**

There is no one single agency responsible for seeing that victims of crime are afforded the rights mandated above. Following, the agencies most responsible will be described.

#### **I. Law Enforcement**

There are 46 separate police departments throughout Rhode Island with 3,128 sworn and non-sworn officers as of 1999. With the exception of 242 state police, 61 Brown University, 56 University of Rhode Island and 46 Environmental Management officers, the rest are employees of the state's various cities and towns. The largest force in Providence with 549 full time employees, followed by Warwick with 225 and the smallest is North Shoreham with 4. In 1999, officers arrested 32,573 adults.

As the chart below illustrates, law enforcement plays a key role in insuring that many victim's rights are realized as illustrated by the above chart. The Rhode Island Victim's Bill of Rights begins only after the crime victim makes a timely report of the crime and cooperates with law enforcement authorities in the investigation and prosecution of the crime. Once notified, police are usually the first criminal justice officials to have contact with the crime victim. As such, they are the first criminal justice agency charged with the provision of specific crime victim services and notifications as well as initial guardians of specific victim rights. For several aspects of the law, they are the only agency positioned to see that victims are afforded their enumerated rights. In addition, in regard to misdemeanor cases, in some communities, police are charged with the responsibility to prosecute the crime at least through the arraignment. In such cases, police prosecutors are responsible for insuring other specific victim rights. They have the same level of responsibilities as local solicitors who also prosecute misdemeanor cases and state prosecutors who prosecute felony cases.



### Law Enforcement Victim's Rights Responsibilities

<b>Rights Section</b>	<b>Victim's Right</b>	<b>Law Enforcement Responsibility</b>
12-28-3(1)	To be notified at least every 3 months of the status of the investigation until the perpetrator is apprehended or the case closed.	X
12-28-3(2)	To be notified of the arraignment of the perpetrator and informed of the release of the perpetrator on bail or personal recognizance	X Police Prosecutor
12-28-3(3)	To receive protection from harm and threats arising from victim cooperation	X State Witness Protection Program
12-28-3(8)	To have stolen or other property returned when no longer needed as evidence.	Law Enforcement (upon notification of prosecutor)
12-28-3(9)	To be informed of financial assistance and other social services that may be available: Victim Compensation	X Police Prosecutor
12-28-3(12), (c)	To be informed of the disposition of the case against the alleged offender: Misdemeanor	X Police Prosecutor Victims' Services Unit
12-28-3(15)	To be notified of the right to request that restitution be an element in the final disposition of the case: Misdemeanor	Police Prosecutor
12-28-9	Child victims (Parents, guardians, etc.) shall be provided information about and referrals to appropriate social service agencies: Investigation	X
12-28-6(b)	Seek victims for parole hearings within 30 days, send written report of efforts to parole	X
12-29-3(e)	Provide written notice and assistance to victims of domestic violence	law enforcement at scene

By statute (§12-28-3(15)(c)), in misdemeanor cases, it is the responsibility of both the law enforcement agency making the arrest and the victim services' unit to make certain that the victim receives the notifications required by §12-28-3. The absence of a fully functioning victims' services unit in the District Court means that, except for domestic violence cases, law enforcement alone is available to undertake these responsibilities.

Once police are notified of the crime, if there is no immediate apprehension and arrest of the suspect, police are obliged under the law to contact the victim of the status of the investigation no less than every 3 months until the suspect is apprehended or the investigation closed. In addition, law enforcement is mandated to provide specific information to child victims, the relatives of homicide victims and victims of domestic violence.

Nine police departments have access to special Law Enforcement Advocates hired by local domestic violence victim advocacy agencies that provide special services to victims of sexual assaults and domestic violence. There are currently four such advocates, paid for by federal Violence Against Women state STOP grants.

Once apprehended, police must notify victims of the suspect's arraignment before a court empowered to set bail and of the suspect's release on bail or personal recognizance (the defendant's promise to return for the next court hearing date). Defendants can be either arraigned in courts before judges or in the police stations before a bail commissioners. If bail commissioners are called before 11 p.m., defendant must pay \$25. After 11 p.m. the cost can increase to \$100. Often defendants brought to the station after 11 p.m. are arraigned in court the following day.

Police are also charged with a specific duty to protect victims from harm and threats arising out of their cooperation with criminal justice officials. In addition, the state has established a Witness Protection Program administered by a State Witness Protection Review Board, staffed by three individuals, including an Assistant Attorney General, a representative of the Chiefs of Police and State Police, usually the Chief of Detectives (§12-30-1 et. seq.). The Board decides on a case by case basis whether or not a specific witness and relevant family members will be admitted into the program. Most referrals come from local police, followed closely by referrals from the Attorney General's Office. Services offered victims vary and can include relocating entire families. By statute, an annual report is filed with the Speaker of House. Program activities, however, are strictly confidential for obvious reasons.

Police specifically are charged with the responsibility of making sure any property of the victims' is returned after the case is over. To be able to comply, police must learn from the prosecutor, local or state, when the case is over and the evidence may be returned. If the case is appealed on legal grounds, resolution can take years.

## **II. Courts**

There are three different court departments in Rhode Island: District, Superior and Family. The District Court hears misdemeanor cases and initial arraignments for felony cases. It may also issue protective orders for unmarried domestic abuse victims (§8-8.1-1 et seq.) In 1999, the District Courts issued 793 protective orders. In felony cases, the sole responsibility of the District Court judge is to set bail pending removal of the cases to the Superior Court.

Although usually arrested for misdemeanor offenses, alleged perpetrators of domestic violence may not be released from custody on bail or personal recognizance before arraignment without first appearing before the court or bail commissioner (§12-29-4(a)(1)). If released, either must issue a no-contact order (NCO) prohibiting the charged person from having contact with the victim. At arraignment, the court may continue the NCO (§12-29-4(a)(2)). Misdemeanor and felony complaint forms must indicate whether the crime charged involves domestic violence and the nature of the

relationship of the parties in order to allow compliance with the above provision ((§12-29-4(c)). Copies of the NCO are supposed to be provided to victims.

There are four District Courts in the state. The 6<sup>th</sup> Division Court located in Providence handles cases for that City as well as for Bristol County, Cranston, Woonsocket and East Providence. The other District Courts are located in Newport, Kent and Washington Counties. Each Superior Court is located in the same areas as the four District Courts.

The Superior Court hears all felony cases and misdemeanor cases appealed from District Court. Rhode Island maintains a *de novo* system for disposing of misdemeanor cases. Defendants may automatically appeal cases heard in District Court for trial in Superior Court where the cases will be heard again unless the defendant pleads out.<sup>19</sup> Although thousands of misdemeanor cases are eligible for appeal to the Superior Court each year for full jury trials, according to the Court Administrative Office, only 634 criminal cases were appealed in 1999. And of these, most defendants pled out their cases. Of the 26 that went to trial, fourteen were found guilty and twelve were found not guilty. Consistently, according to court sources, 20% of the defendants who appeal to Superior Court do not appear for trial and warrants are issued for their arrest.

Family Court hears all juvenile cases, defendants under the age of eighteen charged with wayward behavior (misdemeanors) or delinquent behavior (felonies). The Family Court may also issue civil protective orders for married domestic abuse victims (§15-15-1 et seq.). In 1999, the Family Court issued 2,769 protective orders.

The processing of criminal cases differs for misdemeanors and felonies. In the former, police generally arrest the suspect and bring him or her to local lock up and booking. At arraignment, the suspect is read the charges against him or her. The defendant is advised of his or her right to an attorney. The case is continued for a pre-trial conference. At either the arraignment or the pre-trial conference, the defendant may plead guilty or not contest the charges against him or her. The case will then proceed to sentencing. Otherwise, the case is continued for a bench trial before the judge. If convicted, the defendant may appeal *de novo* to the Superior Court for a jury trial. In felony cases, police arrest the suspect and bring him or her to District Court for a bail hearing or release by a District Court judge. The officer then presents the case to the Attorney General's Screening Unit that decides whether or not to charge the defendant, called "filing information." Alternatively, the Attorney General's Office may present the case before a Grand Jury and ask that an indictment against the defendant be returned, called a "True Bill." The defendant is then brought to Superior Court for arraignment. S/he is then arraigned and bail is reset. The case is continued for conference. If not settled, it is continued for trial. In Providence, however, cases are first scheduled for a

---

<sup>19</sup> De novo appeals are distinguishable from other criminal court appeals. The latter are appeals of the law, not the facts of the case. De Novo appeals allow defendants to appeal the facts of the case and cause a new trial based on the facts. In addition, they retain the same appeal rights as other defendants to appeal legal issues related to their case.

Pre-Arraignment Conference, referred to commonly as a “PAC.” If the case is resolved at the PAC, it is never entered onto the Superior Court docket.

All defendants convicted of felonies have the right to a pre-sentence report to be completed by probation and presented to the sentencing judge (§12-19-6). However, because most sentences are imposed pursuant to a plea agreement between the prosecutor and the defense attorney, formal pre-sentence reports are generally waived by defendants and reserved for cases adjudicated by trial. In 1999, for example, according to state officials, the specially assigned pre-sentence probation counselor completed only 65 pre-sentence reports. However, supervising probation counselors also completed individual pre-sentence reports for defendants already on probation at the time of sentencing or similarly known to the probation counselor but not tracked by the office.

The primary affirmative responsibility of courts in regard to victim rights is the establishment of a Victims’ Service Unit. Uniquely, the Rhode Island Bill of Rights gives this responsibility to the Court. In most jurisdictions, such victim service units are located within the prosecutors’ offices. The state court administrator directs the unit through the Administrative Office of the State Courts. In addition to the specific notification provisions of the statute, the Unit is charged with counseling and supporting victims, assisting them in receiving compensation, in preparing crime impact statements as well as other activities to advance victims rights. The Unit is created to serve victims of crimes “adjudicated” in the Superior, District and Family Courts. The Unit is to allocate resources to victims who have suffered personal injury and to immediate family members of homicide victims before victims of property loss. The statute refers to the unit as the “Victims’ Services Unit.” In practice, however, the Attorney General’s Office has appropriated that title to refer to its victim service providers attached to its office. Staff of this separate unit is not under the administrative control of the court pursuant to this statute.

#### **Court’s Victims’ Services Unit**

<b>Responsibilities</b>	<b>Description</b>
Outreach	Identify eligible victims
Information	Inform victims of rights
Financial Assistance	Assist in property return, restitution, comp. claims, criminal royalties fund
Counseling	Provide counseling, support, and specialized referrals
Victim Impact	Assistant in preparation of victim impact statements/ allocation in court
Notification	Case status with Attorney General and Law Enforcement
Other	Other assistance to further rights of victims

To fulfill its legal mandate, the Court Administrator currently contracts out victims’ services to two different agencies and relies on the Attorney General’s Office for additional victim services as described in the beginning of this report.

Individual judges, in their magisterial roles, are also responsible for seeing that victim's rights are honored. After defendants are found guilty, admit to guilt or do not contest the charges against them, judges are responsible for imposition of the disposition of the case. Generally, the judge may file the case as explained above. The filing may be contingent upon certain conditions. The defendant may be placed on probation or may be incarcerated or a combination of these two dispositions. Prior to acceptance of a plea negotiation and imposition of a sentence, the judge shall, upon request of the victim, allow the victim the opportunity to address the court regarding the impact of the crime. The victim shall be allowed to speak before the counsel for the state and the defendant speak. A representative of a victim, who is under the age of 12 or who is unable to exercise this right shall, upon request, be afforded similar rights on the victims' behalf. In misdemeanor cases, the judge may determine that the presence of the victim would substantially interfere with the court's ability to administer justice and not allow it.

While the judge is in the position to enforce these victim rights in court, it is the responsibility of law enforcement or the prosecutor and the Court Victims' Services Unit to see that the victim is notified of his or her right to be in court. If the victim is not present, the judge can delay or postpone the court hearing until s/he is assured that the victim's absence is voluntary and not due to lack of notification.

Upon conviction of a felony after a jury trial, the judge must enter a civil judgement against the defendant. The court is required to notify the victim (at his or her last known address) regarding entry of the civil judgement. When the court enters any restitution order, the judge must also enter a civil judgement against the defendant for the amount ordered. Courts do not routinely notify victims of these civil judgements.

The courts are also charged with providing victims with copies of NCOs when issued. Courts are obliged to give written copies of No Contact Orders to victims pursuant to §12-29-4(a)(3) but "court clerks" are only obligated to give victims copies of "protective orders" upon request pursuant to §12-29-8.1. As used in the statutes, "protective orders" refer to those orders issued pursuant to chapter 15 of title 15, chapter 8.1 of title 8 and chapter 5 of title 15. Courts do not routinely provide victims with copies of No Contact Orders.

Once protective or No Contact Orders are issued, it is the responsibility of the court, police and bail commissioners to file them by fax or delivery to the Bureau of Criminal Investigation Unit in the Attorney General's Office no later than the end of the day of issuance §12-29-8.1). The courts routinely comply with this responsibility by fax. Once received, the orders are entered into the state's Restraining Order No Contact Order System, RONCO.

As the following chart indicates, judges, in their magisterial roles, are required to allow victims to exercise certain rights. However, it is the obligation of others to see that victims are apprised of these rights and directed to the appropriate hearings to exercise them.

### **Judges/Court Victims' Right Responsibilities**

<b>Rights Section</b>	<b>Victim's Right</b>	<b>Court Responsibility</b>
12-29-9.1	Copy of Protective Order, upon request	Court Clerk
12-29-4(3) 12-29.1-5(A)(3)	Written copy of No Contact Order Elder victim No Contact Order	Court/Bail Commissioner
12-28-3(5)	Separate waiting room in court where feasible	Court Facilities Authority
12-28-3(11) 12-28-4 12-28-4.1	Allow victim to address court prior to sentencing after trial After trial, hear from victim prior to state and defense Prior to plea acceptance, hear victim at victim request	Superior and District Judge hearing case
12-28-3(14)	Hear statement from victim	Superior Judge hearing case
12-28-3(15)	Afford specific set of rights to relatives of homicide victims	Superior Judge hearing case
12-28-3(15)(c) 12-28-10	Establish Victim Services Unit to make sure victim receives required notifications in Superior and District Court	Administrative Office of the State Courts & Court Administrator
12-28-4.3	In Misdemeanor determine if victim can address court	District Judge
12-28-5	Enter civil judgement after jury trial in felony; notify victim of civil judgement	Superior Court Judge
12-28-5.1	enter civil judgement when restitution ordered	District and Superior Judge
12-28-9	Minimize impact on child victim in felonies and delinquency cases	Superior/Family Court Judge

### **III. Prosecutors**

There are three sets of prosecutors in the state. Local police and/or city or town solicitors prosecute all misdemeanor cases. Police prosecutors, for example, may handle the initial stages of the case while the solicitor handles the final trial or plea negotiation. If the defendant appeals to Superior Court, a third prosecutor, an Assistant Attorney General, enters the case. There are 39 cities and towns in the state, each with its own solicitor(s) appointed by local officials. The Attorney General has proposed shifting the responsibility of handling District Court appeal cases to local prosecutors. The proposal is currently under discussion.

### **District Court Case Processing: Misdemeanors\***

<b>Case Status</b>	<b>Number</b>
Brought in 1999	25,864
Disposed in 1999	24,504
Pending for 2000	1,360
Disposed via plea	12,742
Disposed via trial	245
Filed	6,126
Dismissed	4,166
Other	1,225

\*From the 1999 Report on the Judiciary.

The District Court also arraigned 5,885 defendants charged with felonies in 1999, holding 583 bail hearings, almost all for capital felony cases. Under current case and statutory law, defendants are entitled to be released pending trial (§12-13-1). Bail amounts are set based on the likelihood of their reappearance. The danger suspects pose to alleged victims is not relevant except as provided by statute for certain drug cases (§12-13-5.1).

The Office of the Attorney General prosecutes all felony cases as well as misdemeanors charged against personnel acting on behalf of state agencies. The Office has a screening unit that decides the specific charges to be filed against defendants who have been arrested for non-capital felonies. The attorneys who prosecute cases have mixed caseloads with the exception of those prosecuting domestic violence cases. Since 1999, three full-time prosecutors have been assigned to prosecute domestic violence cases, mostly suspects charged with felony assaults, domestic violence, sexual assaults, etc. The Unit also handles offenders charged with their third domestic violence offense (automatically a felony). Occasionally, the unit will handle misdemeanor cases if the local prosecutor is unable to do so for some reason (e.g. conflict). In addition to three prosecutors, this unit has one full-time paralegal that acts as a victim/witness advocate/service provider. The unit is assigned cases from the screening unit which makes the initial decision whether to file information on the case (i.e. charge the case in superior court). At present, each prosecutor has assigned about 80 cases. The Domestic Violence Prosecution Unit notifies victims of court hearings, bail release, etc. Another prosecutor specializes in non-domestic sexual assault cases and has a specially assigned non-attorney assistant.

### **Superior Court Case Processing: Felonies\***

<b>Case Status</b>	<b>Number</b>
Brought (4,130) or pending in 1999	7,497
Disposed in 1999	5,674
Pending as of 2000	1,823
Disposed via Plea	5,073
Disposed via Trial	76
Dismissed	470
Other	4
Filed	51

\* From the 1999 Report on the Judiciary.

In 1999, the Superior Court disposed of 5,674. At the end of the year, another 1,823 cases were pending. A minority, 756, were pending for more than 180 days.

#### **Superior Court Case Processing: Misdemeanor Appeals**

<b>Case Status</b>	<b>Number</b>
Brought (458) or Pending in 1999	1,008
Pending as of 2000	262
Disposed in 1999	746
Disposed via plea	561
Disposed via trial	18
Dismissed	116
Other	15
Filed	36

In addition to these felony cases, the Superior Court also hears misdemeanor appeals as illustrated earlier. Of the 1,008 misdemeanor appeals pending in 1999, 746 were disposed of and 262 were pending at the end of the year with most (61.5%) pending for over 180 days.

Felony prosecutors have the same obligations as local police/solicitor prosecutors as outlined below. By statute (§12-28-3(15)(c)), in general, the victim notification obligations enumerated above in felony cases are specifically assigned to both the Attorney General and the Victims' Services Unit. The statute does not specify or break down specific agency responsibilities.

When release is ordered prior to final conviction, the Department of Corrections notifies the Attorney General who then notifies the victim. Special rights afforded relatives of homicide victims are to be enforced by the Attorney General if they file for such rights with the court. The Attorney General has promulgated forms to effect such requests.

The Attorney General's Office, including its Victims' Service Unit, does not forward copies of victim impact statements to the Parole Board as required. Rather, it forwards copies of disposition letters sent to victims when their perpetrators are incarcerated.



### Prosecutor Victims' Rights Responsibilities

Rights Section	Victim's Right	Prosecutor Responsibility
12-18-3(4)	Timely notification of court proceedings where victim required.	Solicitors Attorney General
12-18-3(6)	witness fee procurement notification	Solicitors Attorney General
12-28-(8)	Notify law enforcement evidence no longer needed	Solicitors Attorney General
12-28-3(9)	inform of financial assistance/ social services	Solicitors Attorney General
12-28-3(11)	Notify victims of right to address court	Solicitors Attorney General
12-28-3(12)	Inform of disposition	Solicitors Attorney General
12-28-3(13)	Felony cases, release of offender prior to conviction, DOC to notify AG to notify victim	Attorney General
12-28-3(14) 12-28-4 12-28-4.1, 4.2 12-28-4.3	Written victim impact statement in file, to be read before plea accepted, submitted to parole Notifications that after trial, victim afford opportunity to speak or family designee if victim under 12, incapacitated Notifications that before plea acceptance, victim afforded right to speak for misdemeanors in district court	Solicitors or Attorney General  Solicitor
12-28-3(15)	Informed of right to request restitution	Solicitors Attorney General
12-28-3(15)(b) 12-28-11 12-28-9	Rights to homicide victim families notification of bail, pre-trial, trial or disposition hearing 48 hours prior to hearing for homicide relatives Arrange special procedures for child victims/provide referrals	Attorney General  Solicitors Attorney General

### IV. Corrections: Probation/Parole, Parole Board and Adult Correctional Institutions

The Rhode Island Probation and Parole Department has both court pre-sentence and offender supervisory functions. In regard to the former, the Department is responsible for providing pre-sentence reports to the court as well as assisting the court in the determination of restitution amounts ordered against convicted defendants. According to probation administrators, the latter function has increasingly been restricted to misdemeanor cases. The Superior Court Master determines most restitution orders in felony cases where that information is not available to the judge at the time of sentencing.

In addition, probation and parole officers supervise convicted offenders. Due to the state of current records, the Department can only give estimates of its current caseload. It reports approximately 23,000 offenders on probation and another 600 on parole. Almost all of the parolees are convicted felons although they may have probation supervision ordered after their release from prison and parole. The probation unit has 57 probation counselors. The Department also has nine supervisors and two Assistant Administrators.

At any given time, a little less than half of the probation caseload is inactive. Cases are “banked.” Banked cases include probationers who have been out on warrants and unavailable for supervision for a period of more than several months. These number about 1,600 felons. The number of misdemeanors out on warrants is not available. Other banked cases include probationers who have been compliant for over a year. These include 6,500 probationers, mostly felons. There are approximately 1,500 misdemeanants banked because their probationary terms are shorter. Probation counselors do not actively supervise banked cases.

As a result, officials estimate that the Department’s active probation caseload is approximately 13,000, split between misdemeanants and felons. General assignment probation counselors supervise most. Misdemeanor and felony caseloads are not usually mixed because they are generated in different courts each with different rules and procedures. Currently, thirteen counselors supervise a special caseload of 1,200 domestic violence probationers, all misdemeanants. Begun with federal funding, this unit is now almost fully state funded. This number represents less than half of probationers sentenced for domestic violence. The Unit covers only half of the state and takes only cases where the probationer is a male and the victim is a female. The Department has been unable to expand the Unit to cover the entire state, according to officials, because it lacks the training money and resources required to do so. This Unit does not include probationers charged with the most serious domestic abuse crimes. Probation counselors with mixed felony caseloads supervise felon domestic violence probationers. Their caseloads are substantially larger than those maintained in the Unit.

The sexual offender unit employs three counselors, but is in the process of expanding to four counselors. This unit has 119 cases. The Unit does not include all sex offenders released on probation. Officials estimate that there are currently 900 sex offenders on probation. The Unit handles only those in certain geographic regions and only the most serious cases. The Unit was created as a result of a legislative budgetary provision.

The Department is also creating a drug unit to accompany development of a special drug court to which one counselor will be assigned. Finally, there is a Safe Streets Project, loosely modeled after Operation Nightlight program of the Dorchester, Massachusetts District Court. The unit has two counselors who work with caseworkers from the Department of Children, Youth and Families to supervise gang involved offenders over the age of 18.

Probation counselors do not have arrest powers and do not have a special program or protocol to apprehend probation absconders.

### Estimated Probation Caseload

Status	Number
Total Probation Caseload only	23,000
Total inactive "banked" cases	10,000
On felony warrants	1,600
Banked for compliance-Felony	6,500
Banked for compliance-Misdemeanor	1,500
Actively Supervised Cases	13,000
Domestic Violence Unit Cases	1,200
Sexual Assault Unit Cases	119

There are approximately 600 defendants on parole as of 2001. The parole unit has ten parole counselors. Parole maintains a specialized electronic monitoring unit staffed by two counselors and a sex offender unit staffed by one counselor. Parole counselors maintain lists of absconders that they provide to the state police.

Probation and parole counselors have limited responsibilities in terms of the Victim's Bill of Rights. Specifically, probation is charged with contacting victims in preparation of pre-sentence reports mandated in felony cases. The reports must include victim impact statements that contain information about the financial, emotional, and physical effects of the crime on the victim and the victim's family as well as specific information on the victim, the circumstances surrounding the crime, and the manner in which it was perpetrated. Probation counselors are also responsible for providing probation restitution orders to the Central Registry (§12-19-34). The Central Registry collects and disburses payments received by probationers and provides probation with a list of all probationers who have failed to pay their restitution 30 days before the final payment is due. The probation counselor can then return the case to court for a hearing for the court to sanction the probationer for nonpayment or extend the case for payment. Restitution is not a condition of parole.

Neither probation nor parole counselors have any statutory responsibility to contact victims regarding the outcome of cases where defendants are sentenced to probation, released on parole or subsequently incarcerated for violating probation or parole. By Probation Department policy, counselors assigned to domestic violence cases contact victims, providing them a packet of information and the name of the probation counselor supervising the probationer. They also inform the victim if the offender has been ordered to attend a batterer intervention program, cautioning the victim that notwithstanding such participation, safety planning may still be required.

A seven member Parole Board decides when offenders may be released from state custody. If released on parole, parole counselors supervise the offenders until their sentences run out. If parolees violate the conditions of their parole, they are brought back before the Board and can be re-incarcerated for the remainder of their sentence. In January 2001, for example, the Board held 22 violation hearings. It revoked parole in 13 of the cases. In addition, it rescinded parole in six more cases. In these cases, inmates who had previously been scheduled for parole either opted not to be paroled or the Board found their circumstances had changed making them ineligible for the scheduled parole.

Concurrent with provisions of the Victim's Bill of Rights, parole release is also provided for in §13-8-6 et. Seq. Under these provisions, the Parole Board must try to notify the victim, the victim's next of kin or the victim's parent or legal guardian if the victim is a child, 30 days before a scheduled meeting to inform them of their right to provide a victim impact statement. Immediately prior to release of any prisoner on parole, the Board must notify the victim. Among release criteria, the Board must consider whether or not the defendant has paid restitution to the victim or "satisfactory arrangements" have been made with the court to pay (§12-19-32).

The Department of Corrections is responsible for housing all offenders who are sentenced to imprisonment or are ordered held pending trial. All state correctional facilities are currently located on the grounds of the Howard Center in Cranston.

#### **Inmate Population: 2000**

<b>Inmates</b>	<b>Number</b>
Daily Count Average	3,298
--- Sentenced	--- 2,630
--- Awaiting Trial	--- 669

Many more offenders are incarcerated per year but for relatively short periods of time, including a number who are held overnight or weekends when arrested when courts are not open. Local police departments have the discretion to hold arrestees in local lock ups or at the Department of Corrections facility. Many will be released as soon as they are arraigned in court. Others are released either on parole or after they serve their required sentences minus whatever good time credits they are entitled to receive.

The following chart reflects all inmates released after serving at least one day in an Adult Correctional Institution. Not all of these inmates' offenses involved victims or, if they involved victims, were felonies for which victims are entitled to notification. If defendants are released pre-conviction after having spent at least one night in an Adult Correctional Institution, the Attorney General must notify the victim. Out of the 11,700 inmates released pre-conviction, officials estimate that 2,000 of these required victim notification.

#### **Inmates Released, 2000**

<b>Inmates Released</b>	<b>Number</b>
Total	15,743
Pre Conviction	11,700
Post Conviction	3,223
Civil Purge	820

Finally, inmates may be released post-conviction, but not as a result of a Parole Board decision. These inmates may simply serve out their sentences. More and more sex offenders, for example, are waiving their right to parole and serving out their complete sentences. Upon request, the Department of Corrections has to notify victims of these releases as well as furloughs, transfers out of state, escape and death. In Calendar Year 2000, 3,223 inmates were released from Adult Correctional Institutions after conviction.

The Department is also mandated to notify victims before inmates are allowed to participate in work release programs.

The chart below summarizes the victims' rights responsibilities of the probation and parole units and the Adult Correctional Institutions of the Department of Corrections.

**Probation/Parole and Corrections Victims' Rights Responsibilities**

<b>Rights Section</b>	<b>Victim Right</b>	<b>Agency Responsibility</b>
S 12-28-3(10)	Consulted on pre-sentence report on felony cases to include victim impact statement	Probation
42-56	Notify of furlough	Department of Corrections
S 12-28-3(13)	In felony, notification of release from ACI to AG prior to final disposition  Notify victims of other inmate release, including furlough, transfer out of state, escape and death  Parole release notification	Department of Corrections  Department of Correction  Parole Board
S 12-28-6(b)	Notification of parole hearing. Upon request, address hearing in person or if minor by parent. Notify police to locate victims within 30 days.	Parole Board Parole Board
(c)		Parole Board
12-28-6(e)	30 days prior to hearing, notify victim for impact statement	Parole Board

**D. Analysis of Victim Rights Needs**

In this section, we will analyze how victim rights needs are being met by the various agencies mandated to provide them and serve eligible victims. We will examine the agencies' performance from the victim's point of view. This section also incorporates the findings of the victim survey. Rather than describe what each agency does and does not do in regard to victim rights, we will focus on their collective impact on victims. Then we will try to sort out how that impact is achieved for both good and bad by looking at the specific role of the individual agencies involved.

The fundamental notification and substantive rights given crime victims under Rhode Island's Victim's Bill of Rights are primarily the responsibility of the agencies of the criminal justice system with the addition of the State Treasurer's Office which administers the state's victim compensation program.<sup>20</sup> In some areas, specific criminal justice agencies are assigned sole responsibility for carrying out specific rights. For example, law enforcement authorities are specifically charged with notifying crime victims (or relatives of homicide victims) the status of criminal investigations every three months until the alleged perpetrator is apprehended or the investigation is closed (§12-28-3(1)(i), (ii)).

<sup>20</sup> The assessment will not include discussion of this agency.

In many other areas, however, multiple criminal justice agencies are given overlapping responsibility. For example, §12-28-3(c) states: “Unless otherwise specified, in felony cases it shall be the responsibility of the attorney general **and** the (Court’s) victims’ services unit to make certain that the victim receives such notifications as required... (Emphasis added).” In other words, two separate agencies located in two separate branches of government are both mandated to provide for the same notification rights.

Similarly, in regard to misdemeanor cases, both law enforcement agencies making the arrest **and** the Court’s victims’ services unit are mandated to insure victims receive such notification as required.

In addition to law enforcement agencies, the Office of the Attorney General, the Court’s victims’ services unit, the administrator of probation and parole (§12-28-3(10)), the Parole Board (§12-28-6(a)) and the Department of Corrections (§12-28-4(13)) are all also mandated to address specific victim’s rights as are the state’s criminal judges (§§12-28-3(14), 12-28-4, 4.1, 4.2, 4.3, 12-28-5, and 5.1).

There are also other instances where no single criminal justice agency is specifically identified as the agency responsible for seeing particular victim’s rights are carried out. For example, §12-28-3(7) affords victims the right to be provided with appropriate employer intercession services to minimize employee loss of pay and other benefits resulting from court appearances. No specific agency is designated as being responsible for actually providing the services. Potentially, a number of different criminal justice agencies may be in the position to do so, including local solicitors, state prosecutors (Office of the Attorney General) judges or victim service providers working for any of these agencies or officials.

Finally, there are several criminal justice agencies that are required to cooperate in order to fulfill their legal victim’s rights mandates. For example, the Department of Corrections is charged with notifying the Attorney General when inmates are released in felony cases (§12-28-3(13)) so that the Attorney General can notify the victim. Similarly, the arresting law enforcement agencies are charged with searching for missing victims before the Parole Board holds inmate release hearings (§12-28-6(b), (c)). And the courts and bail commissioners are responsible for “faxing or delivering” protective orders to the Attorney General’s Bureau of Criminal Identification Unit no later than the end of the day of issuance (§12-29-8.1) before the Unit can enter the orders into the state’s computerized registry, RONCO.

From a victim point of view, what is important is not the structure and responsibilities of the victim rights providers, but the provision of those rights. The myriad victim rights and services afforded eligible Rhode Island crime victims revolve around four major areas: I) victim notification; II) victim participation; III) victim compensation; IV) victim protection. These, in turn, raise four questions:

- 1) Are victims being notified of their rights?

- 2) Are victims being allowed and encouraged to participate in the criminal justice system?
- 3) Are victims being made whole?
- 4) Are victims being protected from further harm?

We will first examine the challenge presented by each area. Then we will analyze the current response of the system. Next we will determine its strengths and weaknesses and make recommendations for improvement where necessary. We will discuss alternative models in place elsewhere that may address shortcomings in current service and rights provision.

## **I. Victim Notification: Are Victims Being Notified of Their Rights?**

The predicate for almost all rights guaranteed victims in the Rhode Island Constitution and related statutes rests on timely and accurate victim notification. Without notification, victims cannot participate in the process, claim restitution owed them or be insured of receiving protection against future harm. In turn, victim notification depends upon a multitude of agencies located throughout the criminal justice system from both judicial and executive branches of government having access to accurate victim information. Currently, all of the criminal justice agencies rely on the original police reports to obtain victim information. Often, however, no matter how accurate this information may be at the time it is obtained by police, it is outdated and inaccurate by the time the agencies use it. Consequently, many agencies initiate their own investigation to obtain victim contact information. The extent of their efforts varies, limited by shortage of personnel, expertise and resources.

Further, because police victim information is not entered into a centralized single paper or automated information system available to all the criminal justice and related agencies that have statutory and Constitutionally mandated need for it, each agency has attempted to create its own paper or automated victim information system. Generally, these separate systems are not shared with other agencies. For example, both Justice Assistance and the Attorney General's Victims' Services Unit have their own, separate computerized systems, although each agency share hundreds of cases in common. The Parole Board maintains a computerized victim file for parolees that is not shared with the Department of Corrections although it has much of the victim information the Department needs to notify victims of non-paroled inmates' release.

**Major Finding: The majority of crime victims are not notified of their rights as enumerated in state statutes.**

### **1. The majority of crime victims are not being regularly notified of their pre-arrest rights.**

If police do not arrest the suspect at the scene, it is the responsibility of the local department to notify the victim of the case investigation until the suspect is either apprehended or the case is closed. Police are not routinely notifying victims of the status

of on going criminal investigations. The responsibility for this notification rests solely with the police. While no police department expressed unwillingness or inability to do so, none appears to have established an affirmative program to notify victims “no less frequently than every three months regarding the status of such investigations.”

Further, except in cases of domestic violence, police are not informing victims, including child victims and relatives of homicide victims, of financial and other social services that may be available to them. According to victims surveyed, only 40% were ever given information about applying for victim compensation. 48% were not informed and 13% were not sure if they were or not. As a result, despite the fact that most victims who were interviewed suffered injuries (or in six cases the death of a family member) only 24% ever contacted “someone in order to receive victim compensation.”

*As one victim reported in the survey, “I didn’t know about victim’s advocate and compensation. I only learned about the trial when I received a No Contact Order issued to the offender. The prosecutor relied too much on the police report and not the victim’s input. I don’t understand pleading down because (the defendant) was arrested at the scene of the crime.”*

**2. Many crime victims are not being notified of the defendant’s arraignment upon arrest if the suspect is not arrested in the presence of the victim. With the exception of domestic violence cases, victims are not being informed of the perpetrator’s release on bail or personal recognizance.**

With the exception of domestic violence cases, police departments do not share common policies and practices in regard to meeting their obligations under the Victim’s Bill of Rights. There is little uniformity in the provision of victim rights and services beginning with how victims are identified and tracked. Although thirty departments share computerized information system software, utilizing Information Management Corporation (IMC) software, Providence, the largest department, does not. Departments vary in their classification of closed investigations. The decision to close investigations can be made by officers at the scene or by detectives. Closed cases can be reopened based on the availability of new evidence or information. Cases on warrants are considered closed by at least one department, although they are re-opened upon arrest.

Occasionally, implementation of victim’s rights may present law enforcement with a dilemma. In regard to periodic notification of criminal investigations, for example, an immediate family member of a homicide victim, entitled to police notification, may also be a prime suspect.

None of the police departments we consulted has implemented a policy to contact victims every 90 days on the status of an open investigation. One captain interviewed was unaware of any legal obligation to do so. Even the relatives of homicide victims are not formally contacted every 90 days as required by law. However, in the course of an active investigation, there may be much more contact with at least some relatives incidental to



the investigation. Concerned relatives are also welcome to contact the police for information.

It appears that most police departments, rightly or wrongly, interpret victim notification rights to be contingent upon the victim specifically requesting them. For this reason, a form used, for example, by the Warwick police department provides two boxes for the reporting officers to check indicating whether or not the victim: 1) wants to be notified of the defendant's arraignment; 2) does not want to be notified. If the defendant is not apprehended at the scene and a warrant is subsequently issued the Warwick warrant form similarly includes a stamped section that also indicates the victim's notification preference. Warwick appears unique in its follow through in notifying victims who request it.

If the victim indicates s/he wants to be notified, the arresting officer is charged with notifying the victim of the defendant's eventual arraignment even if a bail commissioner arraigns the defendant in the middle of the night. Most arraignments, however, performed by bail commissioners are conducted before 11 p.m. Victims, including those who want to attend the arraignment, are not subpoenaed, so they are not eligible for the fees available to non-victim witnesses.

In Warwick, officers do not routinely inform absent victims of the arraignment or release of the defendant. However, if the victim calls the station to ask, s/he is immediately put through to the duty officer who can readily obtain the defendant's file. The IMC file is accessible by the defendant name, and/or arrest date, as well as the victim's name.

By contrast, in Cranston, non-domestic violence victims are not asked at the scene if they want to be notified of the perpetrator's arraignment. Unlike Warwick, defendants are not bailed at the station except on weekends. The police prosecutor estimates that about half of the defendants plead out at arraignment. As a result, few victims are usually present. If the case is continued for a pre-trial conference, usually two weeks later, victims are not routinely notified. They are subpoenaed as needed for trial only as witnesses. If subpoenaed, the police prosecutor's office does not assist them in securing witness fees. Occasionally, the police will subpoena a victim for the pre-trial conference, particularly if they are concerned about the victim's credibility after reviewing the police report.

*A victim, for example, told the survey that victims needed "better follow up after arrest of the perpetrator- I had to pursue information myself to protect my physical safety. A system of follow-up to inform victims of status of offenders (is needed). The police can't do it all. They were very good, but victims need follow through and follow up."*

Across the state, except in cases of domestic violence, police do not provide any special written information at the scene to victims, including child victims, their parents or guardians, victims who do not speak English, elderly victims, victims of sexual

assaults, or immediate relatives of homicide victims. Police do not routinely apprise victims of their rights, available financial services, referral sources, etc. at the scene.

The Acting Police Chief of Providence, however, has recently indicated that his department will begin providing relatives of homicide victims with written rights and service notification. The Rhode Island Victims' Advocacy and Support Center has agreed to provide Providence police with the necessary material.

### **3. Victims of domestic violence are routinely notified of their rights by police.**

Police routinely notify victims of domestic violence of their rights. Police behavior is specifically mandated by statute that demands a detailed protocol of conduct based on regulations promulgated by the Attorney General. In domestic violence cases, police must provide victims with specific services and information pursuant to §12-29-3(e). These include providing transportation for medical treatment, staying on the scene to insure victim safety, advising the victim of his or her right to file for a protective order and file a criminal complaint if police do not arrest the defendant. Also police are obliged to inform the victim of services available. The notice provided the victim must be translated and available in a number of languages. The Attorney General is charged with developing a "Policy for Police Responsibility to Domestic Violence" to implement the provisions of this section. In turn all local law enforcement agencies are charged with developing local policy to implement the Attorney General's policy.

According to officials of the Domestic Violence Training and Monitoring Unit, the Attorney General's Office and local law enforcement agencies have complied with these provisions, although some of the policies may need updating as most were originally drafted before 1990. Even with regard to domestic violence, however, departments vary. Providence police have a specific unit devoted to domestic violence. At least one other department has a specially assigned detective for domestic violence cases. In addition, nine police departments have the services of four Law Enforcement Advocates for domestic violence and sexual assault cases provided by federal Violence Against Women Act funds.

In Cranston, for example, the police department has an advocate and a full time detective who interview every domestic violence victim in person or by phone. Usually victims are informed of the arraignment date at the scene. If the officer is concerned about the threat faced by a victim, s/he may contact the victim when the offender is arrested. Most domestic violence victims do not show up at the arraignment according to Cranston police prosecutors.

The police advocate sends letters to victims regarding the pre-trial conference date and subsequent trial dates. The same victims may also receive letters from advocates from the Rhode Island Coalition Against Domestic Violence who pick up these cases at arraignment.

If the victim does not appear when the case is ready to be disposed, the police advocate may be asked to provide any information she has regarding the victim's status. As a result, according to the police prosecutor, they are able to go forward without the victim in these cases. Often victims call or come in to request that charges be dropped. They are told they must appear before the judge to make the request. If able, the solicitor will try cases without the victim's testimony. If the victim is reluctant to testify, the case may be continued to give her time to decide and to test the continued behavior of the defendant.

*One victim commented upon the efforts of the Cranston police: "The first thing is the police should take action when they know where the criminal is and the victim has bruises. If police had done their job, he would have been arrested that night. They didn't check to see that there was a warrant out on him from earlier- he had assaulted me the day before in Cranston. The Cranston police were great. It was Providence police who didn't go pick him up when I told them where he was. The victim's unit in Cranston sent me a letter. Providence has done nothing. It happened in June and I'm still going to court over it. Maybe there should be a special court for domestic violence."*

*Overall, victims of domestic violence expressed the most negative comments about the criminal justice system, particularly the police. While some described positive experiences, many described police as lacking empathy and in need of additional training. One victim also criticized judges for allowing abusers to have child visitation.*

**4. With the exception of domestic violence cases, victims of misdemeanor offenses are not notified of hearings after arraignment, nor informed of their right to participate in those hearings and request restitution. Victims of non-domestic misdemeanor offenses are also not routinely informed of court dispositions.**

If the criminal charges against the defendant are misdemeanors, the case is continued for a pre-trial conference in District Court that is handled by police prosecutors and/or solicitors. In Warwick, the police prosecution unit consists of one sergeant and two patrol officers. The officers cover Traffic, District and Superior Court. The officer in Superior Court presents the case to Assistant Attorneys General for felony charge screening. While police cover arraignments in Warwick, a solicitor handles the plea negotiations and any misdemeanor trials that follow, but not any appeals taken to Superior Court. The appeals are handled by the Attorney General's Office.

Generally, police departments leave it to the arresting police officer to inform victims of the alleged perpetrator's arraignment. Many misdemeanor cases are resolved at arraignment. If not, the cases are generally continued for several weeks for a pre-trial conference. Although it is the responsibility of both law enforcement and the Court's victims' service unit to notify victims of this hearing, law enforcement agencies have not generally been provided with assistance from the Court's victims' services unit, with two exceptions. The Court has contracted the Rhode Island Coalition Against Domestic

Violence to serve victims of domestic violence in District Court and Justice Assistance to serve victims whose related cases have been filed as a disposition.

As prosecutors, the solicitors could exercise a guardian role in seeing that victims are notified prior to the cases being disposed. However, given that each city and town has its own solicitor, there is little uniformity in the way they function. Solicitors do not currently, it appears, exercise a guardian role to insure victim notification and participation in court.

Uniquely, Warwick police prosecutors have a full time civilian paralegal that is charged with seeing that victims are afforded their rights. She sends letters to all victims notifying them of the pre-trial conference and their right to address the court. The letter also advises them to bring estimates of damages for restitution claims and provides them with her contact information. The letter does not request nor provide victim impact forms for completion and return to the prosecutor. According to one of the police prosecutors, such statements are not needed because victims already gave such statements to the arresting officer at the scene or have provided statements on the complaints. According to the officer, the majority of victims, over 70%, respond to the letter by contacting the paralegal. At this point, she explains the case status further, including the victims' responsibility to bring three damage estimates in order to claim restitution. About a third of all cases are domestic cases. Most of the victims show up for the pre-trial conference.

The Warwick police do not send disposition letters to victims who do not attend the hearing. If the case is appealed, no letters are sent to victims. Warwick police explain that most victims do not need such letters because they are present in court. Those who come to court are introduced by the paralegal to the two prosecutors who handle Warwick prosecutions at pre-trial and trial.

At the pre-trial hearing, the paralegal will also introduce domestic victims to the Coalition Advocate if necessary. The paralegal also provides the Advocate with the pre-trial list of victims in case the Advocate did not identify all domestic violence victims at arraignment. Although the Warwick police paralegal and the Rhode Island Coalition Advocate cooperate, the paralegal was unaware of exactly what the Advocate did or whether or not their functions overlapped. As far as she could determine, victims understood that she represented the prosecutor's office and they contacted her with pertinent questions regarding the case proceedings.

Warwick is the only police department in Kent County that has such a paralegal. According to the Coalition Advocate, the other Kent County police departments do not send letters to victims for the pre-trial conferences.

The court and law enforcement agencies depend upon the victim coming to court to present impact statements and to receive information about case dispositions. Victim impact statement forms are not provided. Victims are not routinely notified of case dispositions except when the cases have been filed as a disposition. In these cases, they are so informed by Justice Assistance Case Managers.

If the defendant is placed on probation, the probation department does not normally contact the victim to inform the victim of the initial case disposition. Subsequently, if the probationer is charged with violating his or her probation and returned to court for additional hearing, the victim is not notified. If the defendant's probation is revoked and is committed to prison, victims are not usually informed.

**5. Victims of domestic violence do receive routine notification of court hearings after arraignment. They are encouraged to attend and participate in court hearings. They are routinely told of case dispositions.**

The Court has specifically contracted with the Rhode Island Coalition Against Domestic Violence to assist misdemeanor victims of domestic violence in the District Court. In addition to implementing specific Victim's Bill of Rights mandates, the Coalition is contracted pursuant to §12-29-7 to provide other services to victims of domestic violence. These include assisting victims in obtaining protective orders, referring victims to shelters, counseling and social services, and monitoring the justice system's response to and treatment of victims of domestic violence (§12-29-7(a)-(c)).

**Rhode Island Coalition Against Domestic Violence, 2000**

Case Type	Stage of Proceedings	Number of Victims Served	Services Provided
Domestic Violence (DV) Cases	Arraignments and those prosecuted in District Court	4,782	Notification of Pre-Trial Conference Information/ accompanying to court
DV Misdemeanor Appeals	Hearings in Superior Court	313*	Information/ accompanying to court
Protective Order Petitions	Family Court District Court	2,696 827	Assist in filling out forms, accompany at hearing

\*Providence

The Coalition has also obtained supplementary funding through a Bar Association IOLTA grant to carry out its responsibilities. As of 1999, the Coalition employed six advocates to assist victims of domestic violence in court. They cover all of the District Court divisions as well as the Family Court. In Providence, one Coalition employee covers the arraignment session to identify all domestic violence cases. She then assigns the case to a Coalition advocate based on geography. Outside of Providence, the advocates cover arraignments too. Domestic violence cases are identified by crimes charged pursuant to §12-29 as coded by arresting law enforcement officers.

The Coalition does not cover felony domestic violence cases. In addition, if a misdemeanor domestic violence case is appealed or the defendant opts for a Superior Court hearing the case may be passed on to the Victims' Service Unit Advocate in Superior Court. The decision to retain a case or not is based on the relationship the Coalition Advocate has with the victim and whether or not the Advocate has the time to pursue the case.

As Coalition Advocates explain, they analyze each day's sheets of arraignments to identify domestic violence cases. They then proceed to the requisite court session where the arraignments are conducted to get copies of the relevant police reports. Some police departments readily provide them with copies, others, including Providence, request they make their own copies. In about half of the cases, the victim is present in the courtroom, having been informed by police of the arraignment time and place. Some have been given the name of the Advocate to contact. In other cases, the Advocate will call out the names of specific domestic victims to see if they are present.

If present, the Advocate meets with them in the hallway, because they are not generally provided with offices in the court for this purpose. The Advocate interviews them as best as she can, informing them of their rights. If police are asking for bail, Advocates have been generally so advised and explain the situation to the victim. Many victims want "No Contact Orders" lifted. Coalition policy is to represent the victim and support her wishes, but Advocates may advise a victim of the Advocate's concern for her safety, the reason for the order as well as the likelihood that the judge may or may not adhere to the victim's wishes. Advocates will also freely express their own concerns regarding victim safety if asked by the judge.

It is the consensus of the Advocates we contacted that most judges listen to their opinions. Judges also base their decisions on the defendants' records, victims' injuries, as well as any expressed victim desires. Some judges, for example, have a consistent policy to maintain No Contact Orders to provide for a "cooling off" period, regardless of what the victim or Advocate desires.

Often domestic cases are settled at arraignment if the solicitor and defendant agree. Frequently, the judge will proceed even in the absence of the victim. The judge assumes that police notified the victim of the hearing so that her absence is interpreted as a waiver of her right to appear and address the court. On occasion, the Advocate may stand up in court and oppose the plea agreement or suggest the case be postponed until the victim is contacted. Judges acceptance of the Advocates' motion varies by judge and by situation. Occasionally the judge will ask the Advocate to contact an absent victim for her approval of the agreement. If the victim does not appear at the arraignment, Advocates send a letter to the victim.

If the case is not disposed of at the initial hearing, it is continued for two weeks for pre-trial conference. Advocates then send letters to victims regarding the new hearing. In this letter, advocates ask victims to provide information on restitution claims but do not ask for or provide victims with impact statement forms. The Advocate letters provide the date and court room where the hearing will be held. The courtrooms are determined by the location of the arrest. If the victim letter comes back with addressee unknown, the Advocate returns it to the file. Advocates do not try to locate the victim. Later, the court may continue the case to allow the Advocate and/or the police to attempt to relocate the victim if the Advocate requests or the judge deems it necessary.

In the interim, Advocates may assist victims in scheduling more immediate hearings to modify No Contact Orders. Although pre-trial conferences are scheduled quickly after arraignments, conferences can be continued especially if the defendant fails to obtain an attorney to represent him.

At pre-trial, Advocates often act as “go between” for the solicitor and the victim. Generally, the solicitor meets with the defense lawyer prior to meeting with the victim. If the parties have negotiated a deal, the Advocate will introduce the victim to the solicitor, usually in the halls. Although the solicitor may have access to an office in court, such offices are small and crowded with police officers. The solicitor is generally interested in obtaining information from the victim regarding medical costs, wishes concerning No Contact Orders as well as her opinion regarding disposition. Because the solicitor has already met with the defense, the Advocate has often seen the tentative deal and is responsible for informing the victim. If the victim objects, the Advocate advises her to raise her objections to both the solicitor and the judge. A victim may ask the Advocate to speak for her in court. If the victim is afraid of the perpetrator, the Advocate will convey this to the judge, often at bench conferences so that the victim’s concerns aren’t spoken in front of the defendant, however, the defense attorney is always present. According to Advocates, many judges are influenced by what victims have to say.

Whenever the case is disposed of without the victim, the Advocate informs the victim of the outcome in writing. According to Advocates, most of the victims who receive disposition letters then contact them. Many victims are looking for restitution; others want to drop NCOs. If victims report violations of NCOs, they are told to file for criminal complaints. They are not generally advised to contact probation. One Advocate explained that probation counselors need proof of the violation and will advise the victim to file a criminal complaint.

Advocates often find themselves explaining dispositions to victims who may be disgruntled and who do not understand the “going rates” for misdemeanor crimes. Most victims report relief that the case is over. If the defendant has been sentenced to probation, the victim is so informed, but no contact information is provided. At this point, no probation counselor has been assigned to the case. The return address for the Advocate is the women’s advocacy and service agency for which the Advocates work. By being located at local domestic violence service and advocacy agencies, Advocates are in a fortuitous position to refer victims to needed services outside the court. They also have the special training themselves to deal with the unique and complex needs and often ambivalent and conflicting desires of victims of domestic violence.

The domestic violence Advocates are in a unique position. Although contracted by the courts to provide services, they are employees of local domestic violence service providers and advocacy centers. Further, one of their concurrent statutory roles is to “monitor the justice system’s response to and treatment of victims of domestic violence crimes (§12-29(b)(4)).” While, according to Advocates contacted, they do not want to “throw a monkey wrench” into the proceedings by opposing deals negotiated between the parties, they will speak out if they believe victims are being re-victimized by “the old boy

network.” They do not, they are quick to point out, work for the prosecutor or police. Generally, they report police are better trained and acquainted with domestic violence issues and are more sensitive to the needs of victims than are many local solicitors. This may be due to high turnover rates among solicitors.

Domestic violence Advocates may also find themselves playing an enforcement role, potentially safeguarding victims. Advocates may learn from victims or discover themselves that a defendant has violated a No Contact Order while the case is pending. One Advocate became known as the “No Contact Prosecutor” because she caused so many defendants to be charged with this violation.

Ironically, Advocates often find themselves representing victims’ wishes that they personally oppose. Rather than being welcomed by victims as allies, however, many victims are hostile because they oppose the prosecution of the case and identify the Advocate as party to the state’s action against their alleged abuser.<sup>21</sup>

Advocates describe their role as supporting women, even if the women’s wishes are contrary to those of the solicitor. They understand that the process of leaving a batterer may take time. They inform these victims that they may return to court if they are re-abused. They explain that prosecution is unlikely to result in the incarceration of the batterer, but will more likely result in court ordered treatment. As one Advocate explained, her goal is to plant a seed with the victim, introduce her to available services for herself and any children and encourage safety planning. A minority of victims, approximately 20%, wants their abusers prosecuted. Advocates noted, however, that many victims want to talk to them whether or not they want their cases to go forward.

## **6. Domestic violence victims do not receive the same level of advocacy and services outside of District Court.**

Coalition Advocates expressed concern for victims when their abusers were convicted in District Court and their cases appealed to Superior Court. Both the Advocates and victims lose track of the cases at this point. They complained that neither is informed of Superior Court dates. Superior Court prosecutors do not, they claim, take these cases seriously, often pleading them to non-domestic charges. They do not feel the Attorney General’s Victims’ Services Unit pays enough attention to these cases. Others expressed the concern that the Attorney General’s special domestic violence prosecution unit does not cover enough domestic violence cases, especially outside of Providence, resulting in a similar lack of prosecutorial zeal.

The dismissal rate for appealed misdemeanors in Superior Court is almost twice as high as that of felony cases in Superior Court (15.55% v 8.29 %). Similarly, the filing

---

<sup>21</sup> See, e.g., Buzawa, E., Hotaling, G., and Klein, A. ( 1998). Response to Domestic Violence in a Pro-Active Court Setting. Lowell, MA; University of Massachusetts Lowell. (Studies have documented that domestic violence victims are often ambivalent at best with the arrest and prosecution of their abusers. However, these same studies indicate that most of these same victims report satisfaction with both police and prosecutors after their abusers have been arrested and successfully prosecuted notwithstanding their initial objections.)



rate is only 0.8% in Superior Court for felony cases, but 4.8% for misdemeanor appeals. However, the dismissal rate for misdemeanors in District Court is slightly higher (17%) and the rate of filing is much higher (25%). However, these District Court figures are not broken down by type of offense.

Despite the outstanding efforts of Coalition Advocates, there are gaps in the provision of services to victims of misdemeanor domestic violence. Unless Law Enforcement Advocates or their equivalent are involved with the victim prior to the offender's arraignment, the Rhode Island Coalition Against Domestic Violence Advocates do not pick up the case until the arraignment. If the victim does not appear at arraignment, the Advocate has no opportunity to contact the victim if the case should go forward at arraignment. If the case does not go forward, given state bail laws, as well as the mandatory imposition of No Contact Orders in all domestic violence cases, the absence of the victim means certain information regarding her safety may not be communicated. In addition, if the police fail to perceive or relate the true extent and nature of the threat the victim faces, that information may never reach the solicitor or judge at arraignment. Even if the victim is contacted subsequently, too much momentum may have already occurred propelling the case to a preset outcome.

Victims are not encouraged to provide victim impact statements for presentation by the solicitor at sentencing. This puts a premium on the direct personal appearance of victims at sentencing. Victims may feel particularly intimidated in the presence of their abusers and may self-censor their recommendations if they do exercise their allocution rights.

*De Novo* appeal severely disadvantages the victim and, at worst, seriously endangers her and her children. Further, it introduces a whole new set of officials, including a state prosecutor (in place of the local solicitor) and a new Victim Advocate if the District Court Advocate cannot accompany the victim in Superior Court. Superior Court Advocates are not specifically trained in domestic violence.

The expertise, experience, training and sensitivity to victims of domestic violence that is brought to bear by Rhode Island Coalition Advocates is arbitrarily restricted to victims of misdemeanor offenses. Domestic violence victims of felonies are no less needy. Superior Court victim service providers from both Justice Assistance and the Attorney General's Victims' Services Unit admit to lacking the training, expertise and resources to deal with needy victims of domestic violence.

**7. Victims of non-domestic misdemeanor crimes receive notification of case disposition only if the case is filed. Victims are not notified if offenders violate the conditions of the court filing.**

The courts have contracted with Justice Assistance to cover misdemeanor cases that are filed at the time of disposition. In addition to the Director, there are eight full-time and one part time Case Managers, four covering District Court and four covering Superior Court. In a large number of the District Court filings, the offender is ordered, as

a condition of such filing, to complete certain court ordered programs, perform a number of hours of community work service or pay restitution.

Upon receiving the filed case from the District Court, Justice Assistance Case Managers send a form letter to the victims. The letter explains what transpired, what the filing means and the specific stipulations of the filing. Domestic violence victims may also receive a similar disposition letter from the Rhode Island Coalition advocates who handled the same case during the court process.

If the defendant has been ordered to complete a domestic violence intervention program, victims are told they can contact the Justice Assistance Case Manager to learn of the defendant's participation in the program. While case managers will not tell them of the offender's substantive participation, they will confirm whether or not the offender is enrolled. According to Justice Assistance officials, batterer programs do not inform victims regarding program content so victim knowledge of the program is limited to what they learn from either the abuser or the Case Manager. Justice Assistance does not provide victims with program brochures because most batterer programs don't have such informational brochures.

Upon receipt of the letter, some victims contact Case Managers to have No Contact Orders lifted. They are advised to consult with Coalition Advocates or go to the clerk's office to schedule a hearing before the court. Most victims do not respond to the filing letters.

If restitution is ordered, Justice Assistance collects and disburses it to victims. If not determined by the court, Case Managers facilitate in its determination. They also inform victims of their right to sue offenders civilly for unpaid restitution. Although the collection rate in these cases is high, over 80%, Justice Assistance seeks approval from some victims to close cases after two years where restitution proves non-collectable. This allows the agency to pay the victim whatever portion of the restitution order has been paid. Otherwise, the agency holds on to partial payments until the full amount is paid.

Once the defendant has complied with the stipulations of the filing and the designated time has lapsed, the case is closed. Justice Assistance Case Managers do not notify victims at this time. Depending upon when the case was originally filed by the court, the defendant's record is expunged after three years for domestic violence and one year for other offenses. Justice Assistance staff is required to monitor defendants and return those who do not pay or comply with court orders back to court for further sentencing. Justice Assistance does not notify victims when filed cases are returned to court for such violations even though the defendants are subject to further sentencing.

### **Victims Services By Court Victim Service Providers: 1999/2000**

<b>Victim Service Provider</b>	<b>Case Type</b>	<b>Stage of Proceedings</b>	<b>Number Victims Served</b>	<b>Services Provided</b>
Justice Assistance	District Court	Filed Cases	2,683	Notify victims of case filing
Justice Assistance	District Court	(Filed Misdemeanor domestic violence cases)	(491)	(Monitor offender in batterer program)
Justice Assistance	District Court	(Filed misdemeanor cases with restitution orders)	(410)	(Collect and disburse restitution to victims)

The role of Justice Assistance in District Court is limited. It is basically offender, not victim, oriented and does not, to any large extent, fulfill the court and prosecutors' mandate to provide victims' notification or services in the District Court. It should be noted, however, that Justice Assistance Case Managers were the only victims' service providers interviewed that mentioned informing victims of their rights regarding civil suits against defendants owing restitution.

The failure of Justice Assistance to notify victims of the final outcome of cases filed at disposition represents a gap in victim disposition notification, especially when the defendant is returned to court for violation of the conditions of the filing. Such victim notification may be particularly important to victims of domestic violence when their batterers are threatened with incarceration as their level of risk may be increased at these times.

#### **8. Victims of defendants held for bail hearings receive notification.**

At arraignment, prosecutors may request bail for certain defendants charged with serious felonies. An Advocate from the Attorney General's Victims' Services Unit is responsible for serving victims at these hearings. Pursuant to state law, a disproportionate number of these cases involve illicit drugs. In other cases, defendants may agree to or not contest bail so victim participation is not necessary. In 2000, officials report there were only 155 bail hearings that involved victims, down slightly from the year before when there were 173 such hearings.

Police generally give the Unit Victim Advocate a bail package containing victim information. The Victims' Service Unit Advocate notifies the victim of the bail hearing, generally by mail because the state has ten days to prepare. The Advocate sets up a meeting between the victim and the state prosecutor. Prosecutors rotated the handling of bail requests. The Advocate maintains contact with the victim after the bail hearing until the defendant appears before the Grand Jury in capital cases. This can take several months following the bail hearing. Once the case reaches the Grand Jury, the victim is reassigned to another Victims' Service Unit Advocate.

#### **9. Most victims of felony offenses receive routine notification of Superior Court proceedings.**

Between Justice Assistance and the Attorney General's Victims' Services Unit, most victims of felonies processed in the Superior Court receive routine notification as mandated by law. The level of contact varies depending upon the processing of the case. On average, victims receive two computer-generated letters: the notification of pre-trial conference and a subsequent disposition letter. Some victims receive more depending upon the processing of the case. The initial victim letters contain victim impact forms that are then supplied to the prosecuting attorneys from the Attorney General's Office.

In addition to written notification, a small number of victims are escorted to court for appearances. A larger number are referred for victim services. Victims are also notified if the defendants are released from the Adult Correctional Institution before conviction.

According to the survey, however, almost 40% of Superior Court victims were dissatisfied with the explanations they received on court processes, case outcome and available victims' services. Most reported being "not satisfied at all." And while 71% of the victims were satisfied with "being informed about upcoming court proceedings only 41% were satisfied with notification of "postponed court proceedings."

**Victims Services By Court Victim Service Providers**  
**Justice Assistance: 1999/2000**

<b>Victim Service Provider</b>	<b>Case Type</b>	<b>Stage of Proceedings</b>	<b>Number Victims Served</b>	<b>Services Provided</b>
<b>Justice Assistance</b>	non capital felony	felony cases after arraignment in District Court	4,893	notifications
<b>Justice Assistance</b>	non capital felony	Before Trial	166	escorts to court
<b>Justice Assistance</b>	non capital felony	Before Trial	1,461	Obtains Victim Impact Statements
<b>Justice Assistance</b>	non capital felony	Before Trial	414	referrals made
<b>Justice Assistance</b>	non capital felony	Before Trial	4,838	orientations
<b>Justice Assistance</b>	non capital felony	Superior Court non capital cases not disposed at PAC in Providence or pre-trial conference in other Superior Courts	718*	refers to AG Victims' Service Unit

\* In 2000.

**Victims Services By Court Victim Service Providers**  
**Victims' Service Unit: 1999/2000**

<b>Victim Service Provider</b>	<b>Case Type</b>	<b>Stage of Proceedings</b>	<b>Number Victims Served</b>	<b>Services Provided</b>
<b>Victims' Services Unit</b>	District Court Appeals	Superior Court hearings	195	Notify victims, provide victim impacts statements, notify of disposition
<b>Victims' Services Unit</b>	District Court Felony	Bail Hearing	155	Notified Victim of hearing
<b>Victims' Services Unit</b>	Non capital cases not resolved by PAC or pre-trial outside of Providence	Superior Court hearings after arraignment	718	Notify victim of Superior Court arraignment for Providence cases/ Pre-trial conferences for rest
<b>Victims' Services Unit</b>	Capital cases	Superior Court hearings, beginning with Grand Jury	347	Meet at Grand Jury, Notify of Pre-trial Conference, collect victim impact statements, notify of rights to appear
<b>Victims' Services Unit</b>	Homicide Cases	Pre Arrest	30*	Contact relatives, inform of victim compensation emergency funding
<b>Victims' Services Unit</b>	Bail release	Post Arrest for all felons	1, 184	notification of inmate release

\*The Unit estimates that it contacted at least one victim per homicide so this figure represents a bare minimum.

Justice Assistance Case Managers pick up their cases from the list of felony arraignments, which are generally held two months after the defendants' initial arraignments in District Court. They obtain the list several weeks before the actual arraignment date. They then pull the individual prosecution files of the Attorney General, which contain a face sheet of defendant information and a police report containing a narrative and victim information. Managers note that victim contact information is generally accurate. However, it is common for the victim's town be mistakenly identified as the town of the arresting police department.

Justice Assistance Managers then send notification letters to the victims. These letters provide information on the arraignment hearing, the current bail status of the defendant and the existence of No Contact Orders and/or bench warrants. Victims are asked to indicate by checking a form provided whether or not they wish:

1. to be notified to attend all subsequent case hearings
2. to be notified only of case outcome
3. not be notified again

The letters also contain a victim impact form developed by Justice Assistance and a pre-addressed, stamped return envelope. Finally, the letters indicate the next hearing date, a pre-trial conference usually scheduled a month or so later. The letters give the name of the Case Manager assigned the case.

These letters usually generate a number of calls from victims. Many domestic violence victims, for example, are concerned about No Contact Orders. While victims have received previous communication regarding No Contact Orders from other

agencies, many contact Justice Assistance, according to officials, because the letter from Justice Assistance is “more personal” and contains the name of the Case Manager. The Justice Assistance Case Manager will assist the victim, cautioning him/her whether or not such a petition is in his/her best interest. The Case Manager will explain to the victim how to contact the Clerk’s Office to schedule a hearing before the court to modify such orders.

For example, a father recently contacted a case manager for assistance in lifting his son’s No Contact Order. The father wanted to visit his son in the Adult Correctional Institute where the son was being held for allegedly assaulting the father and brother. The Case Manager advised the father that if the order were to be lifted and the son raised his bail, there would be nothing to stop the son from returning home to the father and other brother’s house.

In Washington County, 30% of the original victim letters are returned as undeliverable according to the Case Manager, because the victims have moved from the address listed in the police report. The Case Manager suggests that the large student population attending the University of Rhode Island (n=18,000) is responsible for a high percentage of these failed mailings. To rectify this problem, the Case Manager attempts to reach these student victims by sending a copy of the letter directly to the students’ home addresses (for parents to forward or pass along the information), in addition, the case manager checks the University student directory to obtain current addresses.

The prosecutor may also ask the Case Manager to make a special effort to track down missing victims. The Case Manager reports that he tracks down several “missing” victims each week.

Of those victims who actually receive the Justice Assistance, less than 60% respond. Of those who respond, 25% request notification of all proceedings, 25% want no future contact and 50% want to be notified only of outcome. A small percentage of victims meet with the Case Manager for assistance in completing victim impact statements.

By contrast, the Case Manager covering Providence reports that only 10% (n= 7 or 8/week) of the letters she sends victims are returned by U.S. Postal Service. Seventy percent of victims who respond to this letter want to be informed of all case hearings, while 10% want no further contact and the remaining 20% do not respond at all. The Case Manager attempts to contact victims whose letters were returned by phone, in case they retained the same number after moving or the letter was not delivered for some other reason.

Victim impact statements returned to Justice Assistance are copied for the prosecutor’s case file. A copy is not filed in the court file because it is open to the general public. The return rate of victim impact statements is approximately 30% statewide.

The Case Manager sends a letter to all victims with information on the case disposition, including how to contact the probation department where appropriate. Victims are also informed of restitution orders although the exact amount may not be determined yet. The letters do not inform the victims of the civil judgements entered against the defendants. One Case Manager was unaware of such court judgements in restitution cases. Another expressed the opinion that victims never sue. Case Managers obtain the disposition information from a daily sheet provided by the Attorney General's office.

Enough victims, receiving disposition letters, complained that they were not ordered restitution that the Case Managers amended the initial case notification letters sent to victims. The letters now emphasize that the failure of victims to respond with information regarding their losses may result in no restitution being ordered at disposition. Generally, by the time victims receive the initial letters they have only a week or less to respond. When asked if victims needed more time, Justice Assistance Case Managers responded that if victims were given too much time to respond, the response rate would be lower. They feared victims would put off responding and then forget about it all together. Managers believe the current ten-day notice is "about right."

Most non-capital felony victims are only court involved for a few months so Case Managers are limited in their ability to develop relationships with them much less offer long term counseling. They can, however, provide information on the legal proceedings and offer referral recommendations. In addition, they escort victims to court. Case Managers keep daily calendars indicating when victims are due in court. They will call victims to confirm dates or let victims know if the hearings are running late or have been rescheduled.

If the case is continued for trial, the Manager informs the victim that the case is transferred to the Victims' Service Unit of the Attorney General's Office. According to the Manager serving Providence, she stays with victims through arraignment in the Superior Court, after the pre-arraignment conference. Following arraignment, she notifies the victims that the case is being transferred to the Victims' Service Unit.

Although Justice Assistance is a nonprofit agency contracted to provide victims services by the court, its Managers work, in many respects, as agents of the Attorney General's Office. As such, prosecutors may ask them to consult with victims to go over plea agreements or restitution amounts. One Manager, for example, was requested to consult an out of state victim who was assaulted with a golf club. The defendant was a pharmacist and the prosecutor and defense wanted to recommend a plea agreement that would allow the pharmacist to avoid a criminal record but pay full restitution to the victim in the amount of \$1,200. The Case Manager was asked to determine the victim's feelings regarding the deal as well as the exact amount of the victim's out of pocket losses.

The Justice Assistance Case Managers do not receive special training to handle victims of domestic violence or sexual assault. They do not have offices in the courts.

Justice Assistance maintains its own computerized victims database. They employ a Spanish speaking staff member who assists in communicating with Spanish speaking victims or rely on the victims' English-speaking relatives or friends. One manager sometimes uses the services of International House in Providence.

Some Managers expressed concern that in highly emotional cases, standard "Dear Sir" form letters sent to victims were inadequate and too bureaucratic. Managers emphasize that it is difficult to predict reactions and needs of victims from the charges alone. Victims of property crime, for example, were as likely to contact them for information and services as victims of violent crimes.

Unlike Justice Assistance, because it is administered by the Attorney General's Office, the Victims' Service Unit is located on the second floor of the Providence Superior Court. A Unit Advocate in charge of victim notifications acts as a receptionist for the office. The office has a waiting room separated from other court waiting rooms. It contains toys for children and reading material. The Unit sometimes uses vacant jury rooms in other court buildings.

The Unit has, in addition to its Director, one Advocate who covers Washington and Newport Counties; one for Kent County; three for Providence, one Notification Secretary and one Advocate who covers the bail hearings in District Court described previously.

Despite the fact that Victims' Services Advocates receive their cases in three different manners depending upon whether the case is a misdemeanor, capital or non-capital felony case, they provide the same services for all victims. The Unit receives misdemeanors cases appealed from District Court. Although these cases have already gone through the District Court, the Advocate sends the victims impact forms to fill out because they are not provided them in District Court. Last year, the Unit received 195 victim clients from appeal cases. The Unit receives non-capital cases not disposed of pre-trial directly from the Justice Assistance Case Managers. The Unit receives a copy of the actual letter Justice Assistance sends to the victim informing the victims that their cases will be assigned to the Victims' Services Unit. From this letter, the Unit obtains the victim name, address, defendant name and case number. Last year, Justice Assistance turned over more than 700 victim cases to the Unit. The Unit then enters the information into its own management information system and sends out another letter to the same victim. The Unit receives capital cases directly from the Grand Jury. In 2000, it received 347 victim clients from the Grand Jury. Each Unit Advocate carries a caseload of between 50 and 70 cases.

The Victims' Service Unit computerized file was designed in 1987 for a Wang computer, however it is currently being redesigning and upgraded. The system is available only to Unit employees and is updated by the secretary. It is programmed to send out victim letters automatically every three months. There are 50 letters that can be computer generated covering all stages of the criminal proceedings.



The Unit letters remind victims of the next hearing date and introduce the Unit Advocates by name. The letter advises them that they do not have to attend the pre-trial conference. The letter contains a victim impact form for completion. If the letter is returned, the case remains dormant unless and until something occurs to trigger renewed interest in the case. Like the Justice Assistance letters, the Unit letters ask victims to indicate their preferred level of participation. If the victims receive the letters but do not respond, Unit Advocates continue to send them all hearing notifications. Several years ago, Unit officials conducted a manual review of their files and determined that approximately 38% of victims either returned victim impact forms or contacted the Unit in some manner after receiving notification letters.

In 2000, the Unit sent out over 2,317 letters for all of its Superior Court victim clients. Similarly to Justice Assistance, this represents approximately two letters per victim. In addition, it sent out additional letters to specific categories of crime victims including relatives of homicide victims. Unit Advocates make special efforts to personally communicate with special categories of victims, including elderly, child, domestic violence victims as well as those who suffer severe injuries or the loss of a relative to homicide. These letters are sent out regardless of whether the victim responds to routine Unit notification letters.

The letters are effective in generating victim contact with the Unit. Victims often want to know if they should appear in court, or want more explanation of what a pre-trial conference is and how long it will take. Advocates check with the BANNER system to determine which prosecutor is assigned the case and refer victims directly to prosecutors if legal questions are raised.

The Unit forwards copies of victim impact statements to the prosecutors for their files. As with Justice Assistance, these statements are not filed with the court because court files are public.

Although a small number of cases are resolved at the pre-trial conference without the victim's presence, this is exceptional. Most are continued several weeks for another hearing, even if the prosecutor has a copy of the victim's impact statement on file. This affords Advocates time to contact victims. Prosecutors may ask Advocates to contact victims with specific questions, usually regarding restitution or their views on proposed plea negotiations. Advocates generally communicate with prosecutors in person, email or voice mail and alert prosecutors if the victim intends to be present. Advocates tell victims to report to the Victims' Service Unit Office in the court, usually at 9:30 a.m. when the court session begins. If the victim appears, s/he is escorted to the proper courtroom.

Advocates also send notification of dispositions to victims. The letters inform the victims of the disposition and any restitution ordered. If the defendant is sentenced to prison, the letters include information on parole but do not include contact information for parole officials. The letters do not explain the civil judgement provisions of the Victim's Bill of Rights.

In capital cases, a true bill is returned by the Grand Jury. Often victims have appeared before the Grand Jury so they have already met with the Unit's Advocates. Because many of these cases may have had bail hearings that involved victims they may have already met with the representative of the Victims' Services Unit, prior to the Grand Jury hearing. In these cases, the Unit has copies of the police report, the bail report and complete victim information.

In child molestation cases, video taped testimony of the child is used before the Grand Jury although the child is also introduced to the Grand Jury in person. Unit Advocates meet with the child and his parents or guardians. They may stay with the child while his/her parents testify. The Sexual Assault and Trauma Resource Center's Children Advocacy Center generally provide services to the child and family. The Victims' Services Unit Director meets twice a month with the Children Advocacy Center and is informed of all pending cases.

Until recently, in cases of homicides, the Victims Services Unit waited until a defendant was charged with the crime before initiating contact with the victim's family members. As of May 2000, the Unit attempts to contact the family members as soon as possible, whether or not any one has been arrested for the crime.

Unit Advocates inform victims of the outcome of the Grand Jury. They are told of the defendant's arraignment date or pre-arraignment conference date in Providence. After arraignment, victims begin to receive routine computer generated letters that include information on previous hearings, bail information, the next hearing date, a victim informational brochure, and a victim impact form to be filled out and returned. Generally, Advocates know if the victim cannot speak English from the Grand Jury proceedings. Currently the Unit can send information in Spanish and is in the process of translating material into Laotian and Portuguese.

*The survey attempted to contact several hundred felony victims from either Justice Assistance or the Attorney General's Victims' Services Unit files for cases heard in court over the past two years. 30% of the victims could not be reached at the addresses supplied. Some victims had moved, however, others were reported never to have lived at the supplied addresses*

*Of the 28% of victims, who said they met an advocate, the mean number of meetings was two.*

#### **10. Victims are not notified of pre-conviction releases in a timely manner.**

The Department of Corrections provides the Attorney General's Office with a list of all persons transported to court who did not return at the end of the day. The list, called a discharge list, contains defendant information, but no victim information. Upon receipt of the discharge list, the Unit separates out all felony cases and determines where arrests were made using the BANNER system. Each police report is consulted to determine the existence of victims and available contact information. Letters are then sent notifying

them of the defendants' release. As a result, victims do not receive this notification until several days after the actual release. At present the Department of Corrections does not keep victim information in its files and these cases are not contained within the Unit's victim database because the cases have not yet been arraigned in Superior Court.

#### **11. Victims of domestic violence felony offenses receive additional notification from the Prosecutor's Special Domestic Violence Unit.**

Domestic Violence victims whose abusers are charged with felonies are notified at the original District Court arraignment by Advocates of the Rhode Island Coalition Against Domestic Violence that their cases are going to be transferred to Superior Court for prosecution. They are given the name of the Superior Court Domestic Violence Coordinator who is part of the Superior Court special prosecution unit for domestic violence and related sexual assault cases. Although the Coordinator is not a victim advocate by title, she is the prosecutors' key link with these victims in the prosecution of these cases. The special prosecution unit picks up select domestic violence cases after the initial charging or Grand Jury filings.

The Coordinator sends a letter to victims, as do Justice Assistance advocates in non-capital cases and Victims' Service Unit Assistants in capital cases. The letter sent by the Coordinator informs victims of pre-arraignment conferences in Providence as well as the location and date of arraignments. The letter includes the name of the prosecuting attorney, information on No Contact Orders, and contact information for the Coordinator. The letter does not ask for victim impact statements because these are requested by the other victim service entities within the court. The Coordinator attempts to secure an impact statement only if the other entities have failed to secure one. Sometime the various letters sent to victims of domestic violence in Superior Court contain conflicting information due to rescheduling of hearing dates. This requires victims to pay close attention to the date of each letter to determine the actual hearing date.

The Coordinator meets with victims, escorts them to court and provides any other necessary services as directed by the special prosecutors handling the cases. The Coordinator is the first to admit that she is not a victim advocate. In Superior Court, unlike District Court, the Coordinator indicated that she would be "held in contempt" if she spoke out on behalf of the victim. It is the opinion of the special prosecution unit that specialized domestic violence advocates are essential in the Superior Court. While Superior Court Advocates can offer support, they cannot advocate for the victims as do Advocates in the District Court or as is mandated pursuant to §12-29-7.

#### **12. Most victims receive notification of parole hearings and notification of parole releases.**

Most victims are notified of parole hearings, but many are not due to the inability of the Parole Board to locate them. Upon receiving a case from the Department of Corrections, the Parole Board must start from scratch in tracking down current victim information. Pursuant to §12-28-3(14), victim impact statements are required to be included in the case file maintained by the Attorney General or prosecutor. These

reports, in turn, should be filed in the Parole Board records. According to parole officials, however, parole is not routinely forwarded copies of victim impact statements from solicitors, Justice Assistance, the Victims' Services Unit, or the Assistant Attorney Generals who prosecuted the cases. Officials do receive copies of at least some disposition letters the Victims' Services Unit sends to victims. These letters contain the names and addresses of victims. The Chief Investigator of the Board reviews these letters, sent as a "courtesy" by the Unit, to retrieve more up to date victim addresses than may be included in the original police information. A parole investigator attempts to track down victims using the Attorney General's files, which contain the original police reports and other data sources. Once an address is obtained, letters are sent to victims informing them of the upcoming hearing.

In order to determine the track record of the Parole Board in notifying victims and the general victim response to notification, a survey was conducted of January cases up for parole hearings. In January 2001, 134 inmates were scheduled for parole hearings. The Board mailed out 223 letters to victims notifying them of the hearings, including 37 sent to Providence addresses. The U.S. Postal Service returned slightly over half of these letters (n=113) because they were undeliverable.

Many of the returned letters contained new addresses provided by the Post Office but were not forwarded because the addressee had notified the Post Office of the new addresses more than 90 days before. The Parole Board sends out new notifications to any new addresses provided. In the remaining cases, the city or town where offenders were originally arrested is recruited to help locate victims.

In reviewing the January random parole case files that involved individual as opposed to corporate victims, the Parole Board was unable to reach approximately 25% of all victims scheduled for hearing. In all instances reviewed, victims in these cases were reported by police to have lived in Providence at the time of the crime. Parole files indicated that Providence police were requested in writing to locate the victims for the Parole Board. Providence police neither located the victims nor responded to the Parole Board that they had tried to do so. In all cases where the victim was not notified, the Parole Board granted early release. Whether this was coincidental cannot be ascertained from this limited sample.

In addition to letters, notices of parole hearings are published in local newspapers. In addition to victims, the public is invited to these hearing to provide input regarding release.

The Parole Board has hired a Victim Service Coordinator who works forty hours a month to provide additional services to victims. In addition to official notification, the Victim Services Coordinator send her own letter, detailing the services available to victims and encouraging them to contact her to schedule a meeting with her in advance of the hearing. At this meeting she explains their rights and options. She may also help them complete impact statements for presentation before the Board and will determine if the victims are due any restitution upon the inmate's release. A video is provided for victims

informing them about the process. The Board provides information in both English and Spanish.

According to the Parole Board, since it began to mail an accompanying letter from its Victim Coordinator, the response rate has increased. The Victim Coordinator also calls the victims the day following the hearings to inform them of the outcome. If the inmate was not paroled, she informs the victim(s) of subsequent hearings or when they will be released without parole.

According to both the Coordinator and Board members a surprising number of victims, more than half, have never before been contacted by criminal justice officials concerning the case prior to contact by parole. Many did not even know the defendant had been incarcerated until they received notification of the parole hearing. As it is too late for some to get restitution orders, the Coordinator tells them of the availability of victim compensation, although the eligibility date has often passed. The Coordinator finds that she has to explain to the victims the history of the case, plea bargaining and the operations of the criminal justice system. She also informs them of their right to file civil suits if they were not previously ordered restitution.

The Parole Board also sends notification to the victim if they vote to release the inmate on parole. They do not notify victims of parole rejections although the Victim Coordinator personally informs victims. If the Board does not have a correct address, they mail this notification to the last known address of the victim even though the notice of hearing letter sent previously to the same address was returned as undeliverable.

Victims who do not attend hearings may learn of the results by contacting the Board by phone the next day. If parole is approved, while victims are notified they are not informed of the conditions imposed against the parolee. The Board refers victims to the released inmate's parole counselor for follow up.

Parole shares a database with Probation and, in addition, maintains its own unshared database.

If the Parole Board denies an inmate parole or the inmate waives his right to parole, the Parole Board has begun to ask victims if they wish the Department of Corrections to notify them of the inmate's eventual release. To date, "without exception, all victims have requested such notification." As a result, the Parole Board now sends copies of the victims' requests to the Department of Correction. Parole officials were unsure what the Department does with these files. Since it began doing so in October 2000, the Department has sent several dozen victim names to the Department. Some victims give the address of third parties because they do not want to give out their addresses.

According to the Coordinator, many victims are afraid of the inmates, especially women and parents of child molestation victims. For this reason, she has gone so far as to obtain from the Department of Corrections more recent photos of inmates for fearful

victims who express concern in their ability to recognize their perpetrators after years of incarceration.

*The victim survey revealed that a large minority of victims did not understand their rights when their perpetrators were imprisoned. A third did not know they had a right to be informed when inmates are on work release or come up for a parole hearing. In the survey, most victims were not informed of the parole hearing; however, the number of sentenced inmates who had become parole eligible was very small in this sample.*

### **13. Victims are not generally notified of an inmate's release when not paroled.**

Victims are not provided with a registration form from the Department of Corrections to request notification of the inmate's release. Most are not presently notified of an inmate's release when not paroled. Less than half of the victims in the survey were satisfied with Department efforts to inform them of "offender status in corrections."

This dissatisfaction is illustrated by the following examples. On February 9 and 16, 2001, the Parole Board received two separate calls from the parents of children who had been molested. In each case, the child had reported to the parent that she had seen her perpetrator on the streets. One mother reported telling her daughter that the daughter was wrong because the molester was incarcerated. When the parents contacted the Parole Board, they learned that both inmates, who had both been incarcerated for child molestation in the second degree, had been released months earlier. Because they had waived their parole hearings, both inmates were released when their sentences "flatten." One had been incarcerated November 19, 1999 and was released January 22, 2001. The other was incarcerated February 14, 2000 and was released February 13, 2001. According to Parole Board member Lisa Holley, it is increasingly common for sex offenders to waive parole in order to avoid sex offender treatment and monitoring by parole counselors.

The Department of Corrections is currently requesting proposals to develop a system to satisfy its victim notification requirements. It should be noted, the Department of Corrections reports that its attempts to notify victims of inmates scheduled for work release have proven problematic. The Department was unable to contact 17% of the victims last year.

### **Victim Notification Recommendations**

The notification provisions of the Rhode Island Victim's Bill of Rights have been implemented in an inefficient, patchwork fashion. Despite this, the majority of court involved victims of felonies and a substantial number of victims of violent misdemeanors do receive in a rudimentary fashion most of the notifications as mandated by the Victim's Bill of Rights. This represents a significant testament to the dedication and hard work of the personnel of two nonprofit agencies, Rhode Island Coalition Against Domestic

Violence and Justice Assistance, in addition to the Office of the Attorney General and the Parole Board.

Nonetheless, as a result of fundamental structural flaws in the present system, the majority of crime victims do not receive the notification rights granted them by the Victim's Bill of Rights or the more general guarantees enshrined in the Victims' Right Amendment to the state Constitution. The state's greatest failure to notify victims affects the largest category of victims-- those who cooperate with law enforcement but whose perpetrators are not arrested for the crimes allegedly committed against them. While no police agency expressed an unwillingness or inability to inform these victims of the status of the investigation of their victimization, none appears to have established an affirmative program to notify victims "no less frequently than every three months of the status of such investigations" as mandated by the Victim's Bill of Rights.

In addition, except in cases of domestic violence, police routinely fail to inform victims of crime of financial and other social services that are available to them. While the majority of crime victims may have little need for this information, police fail to provide it even in the most serious cases. Relatives of victims of homicide are not uniformly provided with appropriate information, including the immediate availability of emergency funding for the burial of the homicide victim from the state's crime indemnity program. Nor do police refer these relatives to victim service providers that are in the position to offer them assistance (e.g. the Attorney General's Victims' Service Unit).

When alleged perpetrators are arrested and brought to court, the majority of victims are not informed of the arraignment hearing if the offenders are not arrested in their presence. If the victims do not attend the arraignment, they are not routinely informed of the suspects' bail status or subsequent hearing dates and the case outcomes. The majority of victims affected are victims of non-domestic violence misdemeanor offenses, especially property offenses. While the Victim's Bill of Rights specifically provides that the victims' services unit gives priority to "victims, who have suffered personal injury as well as the immediate families of homicide victims," it does not permit the state and localities and their agents to ignore other victims entirely. As consistently noted by victim service providers, victims of property offenses can require as much attention as victims of violent crimes do. Warwick police appear to be one of the few exceptions, affirmatively notifying victims of subsequent arraignments if they request it.

- 1. Police should furnish all crime victims with a card or brochure that provides basic financial and other assistance information as they do currently with victims of domestic violence. The material should include special information for those classes of victims specifically recognized in the Victim's Bill of Rights, including children victims, relatives of homicide victims, and other vulnerable victims with special needs such as elderly victims. Among other things, the information should include basic referral information to general victim service providers, the Helpline and related resources.**

- 2. Police should adopt the procedures established by the Warwick Police Department to ask all victims if they wish to be notified of the suspect's arraignment when that information is available. The victims' desires should be included in the police report for follow up and implementation. If a warrant is issued for the suspect, the victim information should be transferred to the warrant itself.**
- 3. Police should ask victims if they wish to receive information regarding the progress of any criminal investigation. If victims desire it, police should send them written notifications of any open investigation until the suspect is apprehended or the investigation is closed. Police departments should adopt a uniform understanding of what constitutes an "open" investigation to insure uniformity in implementation of this recommendation.**
- 4. Police training should include more information on general victimization, victim rights and the role of police as service providers to victims and guardians of their rights.**

The Attorney General should be charged with the development of a model "Uniform Policy for Police Response to Victims of Crime" similar to that promulgated pursuant to the Domestic Violence Prevention Act. The policy should mandate that police provide contact information for victims either in writing at the scene or as soon as practical. This information should include the:

- address and phone number of the prosecutor's office that will handle the case
- office within the Department of Corrections to obtain offender release information
- appropriate victim service agencies to obtain financial and other assistance
- procedures to follow if the victim is threatened or intimidated.

Other states require police to provide all victims with written notification of their rights and available services. Wisconsin, for example, mandates police to provide such information to victims, in writing, no later than 24 hours after a law enforcement agency has initial contact with a victim of a crime that the law enforcement agency is responsible for investigating (Wis. Stat. Ann. §950.08(2g), (c), (d), (e), (f), (g) for police, §950.08(2r), (c), (e) for prosecutors).

The Attorney General should also establish guidelines for police training and protocols for conduct in the delivery of victim rights and services mandated by law. All Rhode Island police officers receive training offered at one of three different training academies: one administered by the Providence Police Department; one administered by the State Police and a Municipal Police Training Academy. By statute (§12-29-6), all three academies must provide initial domestic violence training of at least eight hours that



stresses enforcement of criminal law in domestic violence cases and four hours of in-service training. The same law also established the Domestic Violence Training and Monitoring Unit and charged it with developing a training curriculum and providing instruction in training.<sup>22</sup>

However, there is little if any training provided regarding the handling of general victimization. Police officers are frequently not familiar with the specifics of the state's Victim's Bill of Rights much less its basic implications. Although police are often the only representatives of the criminal justice likely to have contact with the majority of crime victims, they do not routinely inform or provide material acquainting victims with their rights and available services, including the right of many to crime compensation funding. They do not provide information regarding emergency financing for burial expenses to relatives of homicide victims. Nor do they routinely refer these relatives to other agencies for services. Advocates who desire to provide relatives of homicide victims with assistance, including advocates in both Justice Assistance and the Attorney General's Office, have to rely on newspapers accounts and the state Medical Examiner's Office to identify homicide victims' relatives. As a result, many relatives may be missed.

For example, in March 1997, an individual's brother was murdered in the state. Two years later the man accused of the murder was acquitted at trial. At the time of trial, the brother was laid up, recovering from surgery in another state and unable to attend. He is currently on disability with little income. When he was able to return to Rhode Island, he met with a victim advocate and expressed his interest in filing a wrongful death suit against the alleged perpetrator and seeking compensation funds from the state. The Advocate had to inform the man that the deadline for both had passed. At the time of the murder, he had not been informed of his rights. The Advocate was able to set up a meeting with the prosecutor who had handled the murder trial so that the brother could at least get some questions answered that haunted him. Ironically, the Advocate was able to identify the prosecutor involved not through the Court's BANNER system or police data base but through a file newspaper clippings she maintains on reported homicides in the state!

With the exception of victims of domestic violence, many police also do not notify victims of District Court hearings, depriving them of their right to inform the court or prosecutor of the crime's impact on them and request that restitution be an element of the final disposition of the case. Misdemeanor victims are not provided with victim impact forms if they are unable or choose not to attend subsequent court hearings. Many misdemeanor cases are resolved at the defendant's initial court appearance. If police do not fully explain to victims their rights before hand, the victims' opportunity to exercise those rights is quickly forfeited.

---

<sup>22</sup> The Unit is also charged with providing training to medical providers and probation officers in screening abusers for counseling. The Administrative Office of the Supreme Court is also mandated to establish on going training for judges, court personnel, bail commissioners and clerks.

While the Victim's Bill of Rights recognizes that the "proper and timely administration of justice" may require District Court judges to prevent victims from fully exercising their rights of allocution, such determination is supposed to be based on "the facts of the particular case," not the failure police or others to notify victims of court hearings.

- 5. District Court judges should require police prosecutors and/or solicitors to certify that good faith attempts have been made to notify the victim of the hearing and therefore any victim's failure to attend represents the victim's preference. If the parties are unable to satisfy the court that a good faith effort has been made to notify the victim, then the court should review the facts of the particular case and rule specifically if they warrant proceeding without the victim or not.**
- 6. Police should provide a basic victim impact check off form that includes estimates of any financial losses or potential losses to victims of misdemeanors. Victims should be immediately referred to a court-related victims' services agency or the prosecutor for more information and assistance in completing such a form in time for the earliest possible District Court hearing. The substantial expansion of Law Enforcement Advocates or Helpline "go outs" could offer more immediate assistance to victims and take this additional burden off police officers.**
- 7. The Court's Victim's Services Unit should notify all victims in District Court of the case disposition, including the civil judgement attached to restitution orders. The Rhode Island Coalition Against Domestic Violence should include the civil judgement provision explanation in its notification to victims of domestic violence. Case disposition should include both the initial dispositions handed down by the court as well as any subsequent court proceedings that alter that disposition, including revocation or contempt hearings.**

The majority of victims of domestic violence misdemeanor offenses and felony offenses whose alleged perpetrators have been arrested are routinely notified of their rights through written correspondence. The Court's Victims' Services Unit, which currently includes Rhode Island Against Domestic Violence and Justice Assistance contracted personnel, as well as staff of the Attorney General's Victims' Services Unit, routinely notify these victims of their rights as mandated by law. However a significant minority of these domestic violence victims, estimated to range between 10 and 30%, do not receive any notification.

For the most part, the failure to notify these victims results from faulty or outdated victim contact information, not systemic structural gaps in service delivery. Faulty victim contact information accounts for the consistent failure of these agencies, and later the Department of Corrections and the Parole Board, to reach these victims. To varying degrees, all the agencies charged with victim notification and service attempt to

track down missing victims. These efforts are successful in further increasing the number of victims contacted. However, they are often not enough and require enormous duplications of time and effort that should be concentrated instead on improving the quality of victim contact.

Rhode Island Coalition Advocates should supply victim impact forms to victims of domestic violence to submit to court if they are unwilling or unable to attend court hearings.

If restitution is ordered, victims should be informed of the civil judgement for the amount of restitution ordered and the provision for interest payments if the defendant does not pay in accordance with the criminal court order. In cases of domestic violence, while Rhode Island Coalition Advocates routinely notify victims of case dispositions they do not specifically explain civil judgements. While Justice Assistance Case Managers also contact some District Court victims of case disposition, they only do so when the court files the case as a disposition. They do not include notification of subsequent hearings for noncompliance, including if the defendant fails to pay court ordered restitution.

- 8. Police departments should alter the basic incident report forms to capture additional victim information. In addition to recording the victim's current address, police should ask the victim to provide them with the name, address and phone number of a third party who is most likely to know how criminal justice officials can contact the victim in the future. If the victim does not desire his/her new address to be known, the third party can be asked to contact the victim. The third party could be a relative, friend, employer or other person living in or outside the state. Police should then include this information on the police incident report.**

The collection of third party contact information has proven particularly useful and effective in cases of domestic violence because victims are likely to move as a result of the abuse. Not only has this information allowed officials to locate victims, but has actually lead to increased prosecution rates. Such third party contact information is regularly included in standard police incident report forms elsewhere across the country.

- 9. There should be one central "Rhode Island Victim Notification Agency" solely responsible and accountable for all victim notifications mandated by law from arrest to final release from prison. The agency should be accountable for its performance and serve both executive and judicial agencies on the state and local level.**

To end the duplication of efforts and resources, and fill in the large gaps in the current dysfunctional and disjointed multi-agency victim notification system, there should be a single agency responsible to provide all victim notifications mandated by statute. The Victim Notification Agency should be held fully accountable to both victims

and citizens of Rhode Island. For this reason, it should not be administered by either the Attorney General's Office or the Courts, both of whose personnel are rightfully protected by immunity laws and tradition as emphasized by the Rhode Island Supreme Court in *Bandoni*. The Victim Notification Agency should be headed by a state "Victims Ombudsman."

The agency's sole function should be the efficient and timely notification to victims of related hearings and procedures and such other basic information necessary for victims to be able to exercise the rights afforded them under the law. To the greatest extent technologically possible, this agency should be fully automated and linked with BANNER and other defendant-related management information systems so that it can inform victims of all relevant court and correctional hearings.

Currently, the Department of Corrections is in the process of establishing an automated victim notification system for select inmates. The Department intends to establish yet another independent victim data file based on original, dated victim information obtained by police often years earlier. It might prove more efficacious for the State instead to seize this opportunity to expand the Department's proposed system to form the nucleus for a complete victim notification system. The state of Maryland, for example, has recently announced the development of a statewide VINE system<sup>23</sup> to provide automated victim notification information for every criminal case in the state as well as for every inmate in the state. The Maryland system will enable victims to determine the exact status of the perpetrators' cases or the offenders' status at any time.

The Department of Corrections contemplates its potential in Rhode Island. As spelled out in its specifications, the Department states its proposed system "may potentially serve as a hub upon which other related agencies would build (courts, Attorney General, etc.)."

The victim notification agency should not try to be a generic "victims' service unit" as contemplated by the Victim's Bill of Rights. It should not be responsible for the majority of that unit's current statutory obligations (§12-28-9(a)(1)-(6)). Rather it should concentrate on (1) identification of and outreach to victims to inform them of their rights and of the services available to them and (5) notification about the status of their cases in coordination with representatives of the attorney general or the relevant law enforcement agency. The remaining responsibilities of the courts' victims' service unit should be provided by separate agencies. Victims services providers should work together with the notification agency to follow up on written notifications with more personal contact.

Follow up, crisis counseling, specialized assistance for specific classes of victims, including victims of domestic violence, child victims and relatives of homicide victims, among others, should be provided by specially trained victims' services providers. These trained service providers should not be responsible for routine victim notifications. They should also receive notices from the Victim Notification Agency so they can do follow up with victims as necessary to insure all victims understand and are able to exercise the

---

<sup>23</sup> VINE stands for Victim Information and Notification Everyday

rights given them to the fullest extent possible. The Victim Notification Agency should alert victims to services offered by these separate victims' services agencies and provide contact information.

The current fusion of notification and service provision functions within the same agencies results in both the over and under utilization of these agencies' personnel. One does not have to be trained in domestic violence advocacy and counseling, for example, to inform victims of the next hearing. On the other hand, personnel whose training is restricted to generic victim notification should not be responsible for counseling victims of domestic violence.

## **II. Victim Participation: Are Victims Being Allowed and Encouraged to Participate in the Criminal Justice System?**

Victim notification should not be considered an end in and of itself, but rather the means to encourage victim participation in the criminal justice system and victim utilization of available services. The intent of the state's Constitutional Victims' Rights Amendment and Victim's Bill of Rights goes beyond mere notification of rights. They intend victims to be made whole (receive financial compensation), that offenders be held accountable to victims by insuring that courts are fully apprised of the impact of the crime on victims and that victims be treated with respect, dignity and sensitivity. None of these results can be achieved without active victim participation.

**Major Finding: The majority of victims are not actively participating in the criminal justice system and receiving the rights and services mandated by law.**

It is clear from the victim survey that the majority of victims who expressed an opinion are dissatisfied with the level of services they receive from mandated victim rights and service providers. While they are basically satisfied with the criminal justice system itself, victims appear to hold court-based victim service providers to a higher level of accountability than criminal justice officials. Almost 40% expressed dissatisfaction in the "explanation (they) received of what to expect and how the court system would work," "being informed about the outcome of the case," and "being informed what services were available to victims." *In addition, only 46% of victims interviewed found support services available for victim or victim's family to be adequate. 47% found them inadequate. The remaining six percent had no opinion.*

### **1. The criminal justice system has not taken significant strides to accommodate or encourage victim participation.**

The failure of victims to participate in the criminal justice system at all stages results, in part, from the consistent cold shoulder given victims who do attempt to exercise their rights. This "cold shoulder" is not a reflection of a lack of concern or sensitivity of criminal justice officials towards victims, but rather a reflection of the administrative and bureaucratic challenge of simply grafting victims' rights onto the existing criminal justice system. In many ways, the Rhode Island criminal justice system

remains “user hostile” to victims. The problems that victim service agencies currently have reaching crime victims, for example, is caused primarily because the criminal justice system has not altered its basic offender related record-keeping system to include related victim information. To fully realize the victim’s rights guaranteed by the state Constitution and related statutes, criminal justice agencies and officials must reexamine their roles, practices and procedures for their impact, both good and bad, on victim participation. No where is this more necessary than in the operations of the courts. The continued retention of the *de novo* system for misdemeanor prosecution represents an almost impenetrable barrier to victim participation and, in many cases, affects their safety.

Further the *de novo* system impacts disproportionately on especially vulnerable victims, victims of domestic violence. In 1999, there were over 3,000 misdemeanor domestic violence and related sexual assault cases prosecuted. That same year, there were only slightly more than 330 felony domestic violence cases prosecuted. While most misdemeanor defendants do not exercise their *de novo* appeal rights, its availability dramatically effects how these cases are dealt with in District Courts, severely reducing the role of victims. Sentencing in these cases appears to be formulaic, not individualized for offender risk or need or victim vulnerability.

The fear and ambivalence experienced by these particularly vulnerable victims make their positive participation in the criminal justice system problematic at best. The exigencies of the *de novo* system make it worse, contributing to the inability of the state to hold their perpetrators accountable and protect these victims and their children. Just as there should be vertical victim advocacy throughout the courts, there should be vertical prosecution of these cases. The current *de novo* system prevents this.

The court system has not accommodated victims in providing basic physical accommodations. Most victims have not been provided with separate and safe court waiting areas. Conferences with victim advocates are consistently held in crowded court hallways, often with threatening defendants near by. With the exception of employees of the Attorney General’s Office, victim advocates do not have office space within the court facilities. Only the Washington County Court building provides limited separate space for the Women’s Resource Center of South County in which abuse victims can fill out petitions for temporary restraining orders. The remaining courts provide nothing.

Prosecutors have similarly failed to alter the way they accommodate victims. According to staff from all three court-based victims’ service providers, prosecutors routinely ask them to solicit victim input regarding disposition after the prosecutors have already met with and at least preliminarily worked out a plea deal with the defense.

While the Parole Board has attempted to improve its service to victims, until recently, it provided no staff to reach out to victims to encourage their participation, relying instead on a series of form letters. Due to financial constraints the Board has been unable to update its software and currently sends out letters to victims incorrectly

informing them of a parole hearing date on the first of the month. These hearings are now held on another date.

While in 1994 the Rhode Island Department of Corrections arranged for one of the first victim offender mediations in the country involving a convicted murderer and the mother of his victim, the emerging restorative justice movement growing around the country ironically has gained little traction in the state.<sup>24</sup> Yet restorative justice allows victims substantive realization of their rights through active participation and consultation as contemplated in the state's Victims' Bill of Rights and Constitutional Amendment.

The failure of the state's criminal justice agencies to embrace a restorative justice model in its programming impedes the realization of victims' rights. Notwithstanding the declaration in the state Constitution that victims are entitled to receive restitution from their perpetrators and related provisions in the Victim's Bill of Rights, whether victims ever receive any money from defendants depends upon the commitment and ability of the criminal justice system to hold offenders accountable. In too many instances, it has failed to do so.

In all but one area, victims surveyed felt the criminal justice system did not encourage them to participate in the process even though they received requisite notice. Most were not informed that they could make recommendations concerning the defendant's release on bond even though most expressed concern for their safety. Only 18% of victims that were informed of the hearings felt encouraged to make recommendations. As a result, only 35% actually made recommendations. Two thirds or more reported feeling "discouraged" or "not encouraged" to attend all subsequent hearings. A little more than half felt they were not encouraged to discuss the case with the prosecutor. Only 44% felt encouraged. Victims only felt encouraged to participate in regard to the submission of victim impact statements. Of those victims given an opportunity to provide a statement, three-quarters felt encouraged and three-quarters did provide one.

While victims felt encouraged by victim advocates to participate, they received mixed message, at best, from police, prosecutors, judges and others.

*For example, one victim surveyed stated: "The judge doesn't give you a chance to express your feeling;" another said: "I was never consulted whether to go forward. I felt I was a bargaining chip (as a "no show" witness). I was "used" only when it was to testify." Another added: "No one considered the emotional trauma I experienced. It appeared to me that my experience was perceived as a routine case and rebuffed my input concerning characteristics of the perpetrator which I feel would have prevented future incidents..." Another reported dissatisfaction that the prosecutor didn't call "the witnesses. If he had, the outcome might have been different."*

---

<sup>24</sup> See, e.g., Van Ness, D. & Nolan, P. (Spring, 1998) *Legislating for Restorative Justice*, Regent University Law Review; Umbreit, M. & Carey, M. (March, 1995) *Restorative Justice: Implications for Organizational Change*, Federal Probation.

*The survey asked victims whether or not they felt encouraged to participate in the criminal justice system at various stages. Only a minority reported they felt encouraged to participate. Sixty percent said they were not informed they could make a recommendation concerning the defendant's release on bond. Only 18% felt encouraged by the police or prosecutor to make recommendations regarding the defendant's release. Of those that did make recommendations, 57% felt they had no impact. Only 38.5% of victims felt encouraged to attend pre-trial hearings. Surprising, 42.3% reported they attended pre-trial hearings although 54.5% felt their attendance made no impact on the hearing's outcome. 76.9% were told they had the right to discuss the case with the prosecutor either before or during trial, but half felt the prosecutor did not encourage them to do so. 46.2% felt encouraged to do so. Sixty-five percent said the prosecutor consulted them during the trial.*

*Half of the victims said they were given the opportunity to make a victim impact statement. Only 20% said they were denied this opportunity. The majority of victims, 60%, felt encouraged to make a written or oral victim impact statement. Most of those who made statements felt they had some effect in regard to the jailing of the defendant. Most felt, however, they had no effect in regard to restitution being ordered.*

## **2. The provision of victim services itself has not been structured or organized to accommodate or encourage victim participation.**

Not only is the criminal justice system incredibly complex, the organization of mandated court victims' services providers is equally complex. Rather than one agency providing victims' services from arrest through release on parole, for example, there are half a dozen different such agencies administered by both the judicial and executive branches of government based in the courts as well as individual criminal justice agencies. The Court has not created the Victims' Services Unit mandated by law to serve all crime victims in the courts. As a result, the same victim often has to deal with multiple victim advocates as the defendant's case progresses through the court and correctional system. The building of even short-term relationships, much less the development of trust between victim and advocate, becomes impossible. Further, victims discover that there is no one place they can always call to find basic information in regard to their cases.

While crime victims were generally happy with the criminal justice response, they were less sanguine about victim services provided. In fact, the only area where the majority of victims found system efforts not "more than" or "somewhat adequate" was the "support services available for the victim or the victim's family." More victims found these services to be "inadequate." Only 10% found victim services "more than adequate" contrasted to 29% who found them "completely inadequate." 33% found victims services to be "somewhat adequate," contrasted to 19% who found them "less than adequate." The second highest "completely inadequate" rating given by victims was for the victim's ability to have input in the case. 19% found this to be "completely inadequate."

The survey results are supportive of the qualitative analysis of the victims' rights needs assessment. Current notification efforts do not result in widespread victim



participation in the criminal justice system. While most victims in the survey received notification of proceedings, a consistent minority did not understand them. The rest did not feel encouraged to participate and, in fact, did not participate. As a result, while generally satisfied with criminal justice officials, especially police, most victims were not satisfied with the court-based victim service providers and the services offered them.

The high satisfaction with police, prosecutors and judges is due, in large part, to the sample of victims interviewed. In the sample, the victims' perpetrators were all arrested, almost all successfully prosecuted, and the judges sentenced most of the perpetrators (56%) to jail. This is not a typical scenario for most criminal cases.

Therefore, victim dissatisfaction expressed in regard to the victim services they received is particularly telling. It does not appear, for example, that victim services providers are being blamed for the performance of the criminal justice system. Rather, it appears that victims hold victims' services providers to a higher standard than criminal justice officials, expecting providers to be more supportive and sensitive to victims. Victim advocates may also be blamed for the lack of adequate victims' services available to victims outside the courts. While 58.8% of victims were satisfied with "being informed what services were available" to them, victims split 47% to 47% whether they found the services to be adequate.

*One victim, for example, expressed that s/he "had a pretty good experience as far as how I've been dealt with. The frustration is the number of cancellations. We keep going to the court and it gets cancelled." Only one victim complained specifically about a victim advocate. "The victim's advocate gave me the run around one day. I called him on a Friday to ask questions. He said he would call me back on Monday. He didn't. I come to find out he went on vacation.... I spoke to another woman... Someone must have talked with him because after that week, he put himself out to help."*

### **3. Written victim notification alone is insufficient to encourage involvement.**

The current, almost exclusive reliance on providing victims with written notification results in only a relatively small minority of contacted victims actually participating in the court system beyond their traditional and extremely limited role as crime witnesses. The return rate for victim impact statements, for example, is no more than 30% in Superior Court. The assumption is made that once victims receive written notification, their failure to participate in the criminal justice system represents a knowing and affirmative waiver of their rights as crime victims. The validity of this assumption is subject to question.

First, many crime victims do not receive notification because of faulty or out of date victim addresses. This may range anywhere from ten to fifty percent depending upon the stage of the proceeding. Second, in some cases, victims may not be able to read the material sent them. Currently, material is provided in English with limited provision to translate material into other languages. Even when material is available in other languages, many times officials have no knowledge of the language the victim speaks, or whether the victim is literate in his/her native language. Third, victims may not

understand or may be intimidated by the written notices they receive. The survey shows, for example, that at least a quarter of the victims interviewed had little understanding of the court process, unable to distinguish among an arraignment, pre-trial and trial hearing. As Advocates and Case Managers agree, formal letters are simply not adequate or appropriate especially in highly charged cases with needy victims. For this reason, to the extent they are able, these agencies try to send out special letters or make telephone calls to special categories of victims.

At some point, one has to question whether the state should continue to expend considerable resources for so little relative effect - particularly when it has been demonstrated that with relatively little additional effort, victim involvement can be significantly increased. Victim participation appears, in large measure, to be a function of the quality of the invitation received by victims.

The provision of a paralegal provided by the Warwick police to assist victims, for example, has resulted in a reported victim appearance rate in District Court estimated at over 50%. At the same time, other police departments report that the majority of victims do not want to participate in such court hearings and do not regularly appear! Similarly, when the Parole Board hired a part time Victim Coordinator, it found that calling victims on the phone significantly increased their participation rate. Further, when the Coordinator informed victims of negative parole hearing outcomes, all of the victims requested subsequent release notification from the Department of Corrections. It is doubtful that an equivalent response rate will occur if the same victims simply receive written notification from the Department of Corrections requiring them to fill out additional forms to request subsequent information.

While many, even the majority, of crime victims, may choose not to exercise their rights, the criminal justice system should reach out to those who do. Further, if victims are given to understand the implications of their participation, more may wish to exercise their rights. Justice Assistance Case Managers found, for example, that despite form letters requesting victim impact information before disposition hearings, many victims did not understand that restitution orders might be dependent upon the completion of these forms.

#### **4. Victims have little redress for rights violations.**

The current system offers little redress for victims who are deprived of their Constitutional and statutory rights as crime victims. Not only are individual victims detrimentally affected, but the victim rights and service providing agencies do not receive adequate feedback to be able to improve their operations and services to better serve victims and comply with the law.

The Rhode Island Supreme Court has ruled that the state's Constitutional Victims' Rights Amendment and statutory Victim's Bill of Rights are not "self-executing." As a result, victims may not sue for damages if deprived of their rights as crime victims. Further, because of competing and equally important defendant rights,

victims cannot demand non-monetary remedies that would infringe on the rights of defendants, including retrials, new sentencing hearings, etc.

#### **5. Some relatives of homicide victims are not receiving the full benefit of available victim services.**

Finally, the current system is experiencing difficulty in reaching victims with special needs, such as relatives of homicide victims. The number of people murdered in Rhode Island has averaged a little more than 35 per year for the past 10 years (1990-1999). While overall Index Crimes have declined during this period by a third, dropping from 53,630 to 35,506, the number of homicides has remained stable. In fact, in 1999, homicide rates increased from the previous three years and were equivalent with the 1992 rate. In contrast, nationally homicide rates decreased by more than half during this same period. The number of domestic violence homicide cases in Rhode Island has increased from three per year from 1980 to 1989 to four a year subsequently. Nationally, domestic homicides have dropped by over half during this period.

The Attorney General is mandated to contact relatives at least 48 hours prior to the first court bail hearing affecting the charged perpetrator. This notification, however, is required only as to those immediate family members who have filed a request with a court that asserted jurisdiction over the accused/defendant. The Attorney General is charged with supplying a form to relatives to request notification. According to Victims' Services Unit, while such forms have been disseminated to police departments, their use is uneven. For this reason, the Unit does not limit its response to relatives based on their registration with the court.

Notifying relatives of homicide victims and providing them services requires special efforts and expertise. Many relatives may not be capable of taking advantage of the rights and services offered, particularly if they are approached bureaucratically through form letters, etc. For example, while the victim compensation program includes emergency funding to provide for the burial of the deceased, family members may be too numb or upset to apply and arrange for their loved ones' funeral.

*One victim surveyed, for example, expressed the need for "more support for families in terms of compensation-more psychological counseling by qualified personnel-someone whose specialty is rape crisis counseling probably isn't the best one to do counseling for people like me who have had a child murdered."*

Several programs have been developed in the state particularly aimed at relatives of homicide victims. Susan Molhan established Family and Friends of Murder Victims after the murder of her son in the 1980's. Anne Marie D'Alessio, who worked with Family and Friends for eight years until that program folded, became program manager of a new YWCA program established in 1995, Survivors Outreach Services (SOS). SOS was established to take up the slack in serving families of homicide victims.

At the same time, the Rhode Island Rape Crisis Center's Homicide Bereavement Program added a clinical component to its service model. SOS documented that "the

most crucial element of (its) program was the direct, face to face contact and outreach to families.”

The Homicide Bereavement Program receives its referrals from SOS and other community agencies as well as the state Medical Examiner’s Office. It offers direct services and referrals to other services as appropriate, runs group sessions, and offers case management and individual counseling. Therapeutic groups have been organized for children who have witnessed the murder of a parent, children who have experienced the murder of a close friend, adults who have lost a spouse or significant other and for surviving family members. In 1998, the Program provided services to 79 family members and friends of homicide victims.

SOS reported it served between 100 and 125 clients a year in its first two years of operation. SOS was incorporated into the programs of a newly established agency in 1999, Rhode Island Victims’ Advocacy and Support Center headed by Anne Marie D’Allessio. In addition to Project SOS, the new agency was established to provide services to many victims of crime not covered by existing agencies, including (non domestic) felony assaults, armed robbery, burglary, breaking and entering, white collar, hate, larceny and arson crimes. Even existing victims’ services agencies may be limited relative to practical solutions in the victim recovery process, providing a comprehensive, step by step approach using individualized case management to address the needs of crime victims.

The Victims’ Advocacy and Support Center has only two part-time employees supplemented by a core of volunteers, including individuals who have had relatives murdered. Project SOS of the Center is funded with VOCA funds through Justice Assistance. The Center tries to contact relatives of homicide victims as soon as possible, including visiting them at their homes. It also offers ongoing support sessions, a library of resource material, and counseling referrals. One of its programs is to match families experiencing a homicide with similar families who have already experienced this tragedy. The program offers individualized case management. The Center continues to deal with relatives of homicide victims after any related criminal case has taken its course. Most relatives stay involved for at least two years. Some are still involved after ten years.

Since the Victims’ Services Unit of the Attorney General has started to contact relatives of homicide victims before an arrest of the suspected perpetrator, both the Center and Victims’ Services Unit try to contact relatives as soon as each learns of a homicide. While each agency has immediate services to offer such relatives, generally police do not provide the relatives with information regarding either agency, nor do they inform them of information important to the families of homicide victims such as the existence of emergency burial grants. Instead, both agencies get the names of relatives from the Medical Examiners Office, or, directly from newspaper stories. The Victims’ Service Unit also refers cases to the Center that it may not have contacted. Center volunteers and staff, in turn, help victims fill out victim impact statements provided by the Victims’ Services Unit and accompany some relatives to court and intervene to protect victims from the media where necessary. The Center also refers cases to the

Bereavement Program of the Sexual Assault and Trauma Resource Center. When queried, Victims' Service Unit officials were unsure whether it made referrals to the Bereavement Program stating that with the liberalization of victim compensation funding for counseling, victims could afford to contract for their own counseling with a variety of mental health providers. It should be noted that such providers might or might not have specific expertise in this area.

**6. Special services are regularly being provided to child victims of abuse.**

Since 1993, almost all police departments refer cases to the Children's Advocacy Center administered by the Sexual Assault & Trauma Resource Center. Formed as a result of several years of work by the Attorney General's Task Force on Sexual and Violent Physical Abuse of Children, the Center provides a multidisciplinary team effort involving police, prosecutors, medical personnel, mental health professionals, and human service providers. It provides child victims and non-offending parents/guardians with interviewing, evaluation, and treatment services at a neutral location in a comfortable environment to prevent further trauma to the child caused by typical investigations, medical examinations and related contacts from other helping professionals and justice officials. In 1999, the Center served 286 child victims. Some police refer all cases to the Center. Others refer only cases considered "complicated."

The Center does not currently assist the children and their parents/guardians in preparing victim impact statements, disposition recommendations, or restitution requests.

**7. Special services are regularly provided to victims of domestic and sexual abuse including Helpline crisis calls to shelter to longer term counseling and advocacy.**

There are a number of excellent agencies providing an array of services for victims of sexual and domestic abuse. Although the Helpline is trying to expand its scope, it too primarily services victims of sexual and domestic assault. It is not clear, however, whether or not most of the victims they serve are involved in the criminal justice system. As a result, these programs are understandably not focused particularly on criminal justice related issues potentially affecting their clients. Even the Children's Advocacy Center, for example, which is designed for court-involved cases, does not include specific assistance to the children and/or their parents or guardians in exercising their rights in court to present the impact of the crimes or claim full restitution.

Just as criminal justice officials should be trained and sensitive to crime victim issues, victim service providers should be trained and sensitive to criminal justice issues. Advocates need this training to be able to advise and assist their clients who are or may become involved in the criminal justice system. Currently, domestic violence advocates provide such advice and assistance to victims of abuse in regard to protection orders. Providing equivalent advice in criminal courts is more challenging.

## **Victim Participation Recommendations:**

- 1. The provision of written notification to victims should represent the absolute minimum outreach to victims. Victims, whenever possible, should be provided with personal contact in addition to written notification informing them of their rights and assisting them in participating in the criminal justice system.**

At the same time that the Victim Notification Agency contacts victims, designated victim service providers, police, prosecutors, probation and parole officials should receive copies of the notifications so they too can contact victims as needed. Specific victim service providers should reach out to crime victims to enable these victims to exercise their rights and receive services to which they are entitled.

For example, the Rhode Island Coalition Against Domestic Violence should reach out to all victims of domestic violence regardless of whether or not the perpetrator is charged with a misdemeanor or felony. There should also be vertical advocacy with the Advocate staying with the victim from start to finish, whether or not the suspect appeals a misdemeanor to Superior Court, has his case filed, is probated or jailed.

Similarly, specially trained advocates should be notified and reach out to all appropriate relatives of victims of homicides to offer assistance and services. The protocol for this assistance should go way beyond the provision of written notices. Services should include home visits, accompanying victims to funeral homes and court and counseling support groups where necessary.

Sexual assault victims should receive specialized outreach by trained sexual assault service providers. Proposals for a Sexual Abuse Response Team, modeled after the Children's Advocacy Center, will address many victim as well as criminal justice needs.

Victim advocates should be available to all categories of crime victims, including victims of property crimes or non-domestic assaults and thefts. The survey reveals that at least among victims of felonies most victims are not well off, reporting family incomes of \$50,000 or less. Only 35% are employed full time. Eleven percent reported they were disabled and another 11% indicated they were retired. Most are female.

- 2. There should be a clear distinction drawn between court-based or independent victim "advocates" and other prosecution-based victim "advocates." Both are essential.**

While agents of the Rhode Island Coalition Against Domestic Violence, Justice Assistance and the Attorney General's Victims' Services Unit perform equivalent duties, they are potentially very different. Freed of the tremendous time and effort they currently spend in simply trying to track down and provide written notices to victims, differences among them would become more apparent. Representatives of the former two agencies

are not attached to the prosecutor's office. While they must explain the process to victims, including any plea agreement reached by the prosecutor, they have no obligation to endorse it or encourage the victim to cooperate. While representatives of the Attorney General's Office may represent the victim's wishes to the prosecutor, ultimately, it is their responsibility to represent the Attorney General to the victim. They are subject to the dictates of the Attorney General, an elected official who is accountable to the electorate at large, not specifically to crime victims.

It is more likely, for example, that court-based or independent victim advocates will more objectively review police, prosecution, sentencing and correctional patterns and determine whether or not they meet the needs of Rhode Island crime victims than prosecution-based advocates. It is more likely, on the other hand, that prosecution-based advocates will successfully promote effective victim cooperation in case prosecution.

Freed of victim notification and related service responsibilities, the expansion of the Attorney General's Victims' Services Unit should maximize victim-prosecution cooperation. As the special domestic violence prosecution unit attorneys are the first to express, the addition of a full time paralegal on their staff to assist and serve as a liaison with victims was essential to improving the quality and success of their prosecutions in felony domestic violence cases. Such prosecution-victim liaisons should be offered to all victims, but most especially to vulnerable or needy victims including victims of sexual assaults, child and elderly victims, and relatives of homicide victims as well as cases involving serious injuries and losses.

Elsewhere, the Norfolk prosecutor's office in Massachusetts, for example, utilizes victim/witness advocates to facilitate weekly support groups offered to victims of domestic violence who apply for either court restraining orders or for whom police have filed reports of abuse. The victims are invited to meet with other individuals in similar circumstances. Not only is information presented to them in the sessions regarding abuse, safety planning and the criminal justice system, but the victims hear from each other on their cases, what transpired in court that week and so on. The support group has increased victim cooperation in case prosecution.

In addition, the prosecutor has assigned other victim advocates to assist victims who have related custody and visitation cases in the Family Court. Although these cases are civil, the prosecutor realized that if defendants could successfully threaten victims with the loss of their children, the victims, according to the Norfolk District Attorney, would be more likely to drop charges or refuse to cooperate with concurrent criminal prosecutions.

In Rhode Island, Law Enforcement Advocates currently utilized by nine local police departments have proven the efficacy of such police-based victim assistants. While local women's shelters and advocacy agencies employ the Law Enforcement Advocates, they work for local law enforcement agencies. Programs like these should be expanded throughout the state and throughout the criminal justice system and go beyond just victims of domestic violence.

While this program is presently limited, it is worth noting because of the exemplary services provided to victims of domestic violence and sexual assault.<sup>25</sup> Law Enforcement Advocates represent a unique marriage between law enforcement and victim advocacy service agencies. Advocates work directly with local police under a coordinating board made up of representatives of both police and the advocacy agencies. The advocates provide immediate, front line services to the victim when the victim may be in greatest need.

Law Enforcement Advocates carry beepers so that they may be called to the scene of a domestic or sexual assault or to the hospital where a victim is taken from the scene or the police station where the victim is brought to be interviewed by police. The mere presence of the Advocate may provide some comfort to victims who must deal with the trauma of both their victimization and impending involvement with the criminal justice system. Advocates frequently reach the scene after police have completed their initial interviews with victims. They are able to meet with the victim in slightly more relaxed circumstances and explain to them their rights and available services. While Advocates cannot maintain confidentiality with victims, they can assist the victim in contacting a state's Helpline advocate who can maintain their confidentiality. In addition, if advocates are unavailable, Helpline volunteers are available to meet with victims although they do not have the same access to police stations.

In 2000, Helpline volunteers accompanied police on 30 occasions, five more than the year before. They also accompanied victims to hospitals 246 times, 78 more than the year before. Most of the latter were victims of sexual assault and most were or became involved in court prosecutions. Both Helpline and Law Enforcement Advocates are involved with victims of sexual assault even if the victims do not press charges against their assailants.

It goes without saying that the presence of an experienced, trained Law Enforcement Advocate helps fulfill the Constitutional mandate that these victims are treated with dignity, respect and sensitivity and are afforded the specific rights and services outlined in the Victim's Bill of Rights. Unlike the provision of written material provided victims, the provision of Law Enforcement Advocates insures compliance in substance as well as form. The integration of Law Enforcement Advocates into select police departments provide a sterling and rare example of criminal justice agencies incorporating substantive victim's services into their daily operations.

However, the combined effort of the Law Enforcement Advocates and Helpline volunteers to assist police-involved victims is extremely limited, reaching relatively few victims. On the other hand, an additional benefit of the Law Enforcement Advocate involvement with police is that the advocates regularly interact with officers. As such, they serve as both models and instructors for police interaction with victims. In the long

---

<sup>25</sup> . This program is described in An Evaluation of Rhode Island's Violence Against Women STOP Formula Grants, 32-33.



run, this may rebound significantly and positively on police interaction with victims of crime even when Advocates are not involved.

**3. Victims should be able to obtain redress for violations of their rights as victims. Legislation should be enacted allowing victims to hold local and state officials accountable for their good faith effort to provide victims the rights afforded them by statute.**

In the *Bandoni* decision, the majority specifically noted the example of Ariz. Rev. Stat. §13-4437 as a means to provide victims a statutory remedy for rights violations. The Arizona law gives the victim of crime “standing to seek an order or to bring a special action mandating that the victim be afforded any right or challenge an order denying any right guaranteed to victims under the victims’ bill of rights, article II, section 2.1, Constitution of Arizona, any implementing legislation or court rules.” Further, the victim has the right to “recover damages from a government entity responsible for the intentional, knowing or grossly negligent violation of the victim’s rights...” A similar law should be considered in Rhode Island.

However, such statutes place the onus on the victim to obtain counsel and initiate the suit. The legitimate grievances of the overwhelming number of victims may be resolved without resorting to such suits. Many victim grievances appear to be the result of misunderstandings and lack of accurate information. As a result, a number of states have enacted alternative methods to enforce victim rights.

**4. The state should establish a Crime Victims Right Board to investigate, mediate, review and redress victim complaints of rights violations.**

The alternative model developed in a number of states is to establish a state board to receive victim complaints. Once received, the board is empowered to obtain disclosure of any information relating to the enforcement of rights under the state Constitution and Victim’s Bill of Rights and related statutes and/or regulations from law enforcement, courts or corrections. The information may be used only for the purpose of enforcing victim rights and providing services mandated by law. It may be made available only as necessary to ensure that victims and witnesses of crimes receive entitled rights and services.

If the board finds the victim’s complaint to be meritorious, it mediates between the victim and the public officials, employees or agencies involved. If unable to resolve the matter, the board may seek equitable relief on behalf of the victim if such relief is necessary to protect the rights of the victim. The board may not seek to appeal, reverse or modify a judgement or conviction or a sentence in a criminal case.

The board may also review pertinent agency policies, procedures and practices to ensure compliance with Constitutional and statutory victims’ rights provisions. Toward this end, each agency must provide an annual report to the board reporting on its policies,

procedures and practices as they relate to that agency's responsibilities toward providing, protecting or promoting victim rights.

Several states have variations of the above model. Wisconsin created a "Crime Victims Right Board (Wisc. Stat. Ann. §950.09(2))." Colorado created a "Coordinating Committee" to review noncompliance and refer legitimate claims to the Governor if not resolved. The Governor may request that the Attorney General file suit to enforce compliance (Colo. Rev. Stat. Ann. §24-4.1-303). Minnesota established a "Crime Victims' Ombudsman" to discourage mistreatment of crime victims and ensure compliance with statutory provisions of victims' rights. The Ombudsman's duties include investigating complaints, regarding the delivery of services by various victims' assistance and reparations programs, and complaints of mistreatment by state and local criminal justice agencies (Minn. Stat. Ann. 611A.74). In addition to investigating complaints, the Ombudsman can investigate any action or inaction on the part of any agency that is contrary to victim rights laws. The Ombudsman may act as a liaison between victim and agency, promote activities that strengthen criminal justice systems, prevent violation of rights, and establish procedures for referral to appropriate victims' service agencies.

Studies of these state's compliance enforcement programs found most complaints by victims were resolved quickly by getting the parties to communicate. In Minnesota, for example, a homicide victim's mother felt she was not receiving timely information regarding the status of the investigation into her daughter's death. The Ombudsman's Office quickly resolved the complaint by contacting the officer in charge of the investigation to relay the mother's concerns. An officer contacted the victim's family the next day. The mother reported back that the officer apologized for any mistreatment and promised to notify her of any future developments in the case.<sup>26</sup>

The advantage of third party intervention by an administrative review board as employed by the models is that it gives aggrieved victims a place to turn without having to initiate individual law suits. It allows the agency to act on behalf of victims if it discovers patterns of noncompliance or gaps in services before victims are deprived of statutory rights and services. In all three states, reports indicate that complaints have been limited.<sup>27</sup>

**5. Criminal justice agencies should review and revamp their operations to encourage active victim participation. Each should establish a victim advisory board to assist it.**

Studies of victim rights implementation around the country have generally cautioned that simply grafting victim rights onto the current structure and operations of the criminal justice system are bound to lead to frustration and disappointment for

---

<sup>26</sup> State of Minnesota, Department of Public Safety, The Office of Crime Victim's Ombudsman, 1993-1994 Biennial Report, 12.

<sup>27</sup> Office for Victims of Crime Report, Victims' Rights Compliance Efforts: Experiences in Three States, U. S. Department of Justice, 1998.

victims and criminal justice officials alike. As elsewhere, the enactment of state laws and state constitutional amendments appear insufficient to guarantee the provision of victims' rights in practice. Experts conclude that a host of other factors mediates the effects of these laws. As a result, additional steps may be necessary to address the other, intervening factors, to better ensure that the laws have their intended effects.

State criminal justice agencies should review their operations, organization, policies and procedures to maximize meaningful victim participation. Agencies should explore to what extent the restorative justice model could be implemented in the state. To assist them in this effort, agencies should establish victim advisory boards to review their operations. These boards should be given the same- though largely unfulfilled- mandate as the "domestic abuse court advocacy project" to "monitor the justice system's response to and treatment of victims of domestic violence crime (§12-29-7(b)(4))." However, their mandate should be expanded to include all victims, not just victims of domestic violence.

Over the past decade, interest in and adoption of restorative justice programs have increased in criminal justice agencies. Restorative justice, unlike the current retributive justice model adopted by most criminal justice systems, emphasizes that crime represents first and foremost conflict between two sets of actors, rather than simply violations of rules and laws promulgated by the state. Therefore, in order to address crime, the victim must be centrally engaged and involved in the process. The obligation of the criminal justice system is to restore the rightful relationship among all parties, specifically the immediate crime victim, the community and the offender. By contrast, the retributive justice system is almost exclusively offender focused.

While a dozen states have adopted restorative justice schemes, particularly in the area of juvenile justice, many criminal justice agencies around the country have begun to incorporate restorative justice concepts into their daily operations. These include, but are not limited to, community impact panels in sentencing, victim offender mediation programs, circle sentencing, direct victim reparations and community work service programs.

With the exception of restitution and community work service orders, few of these programs appear to have been widely utilized in Rhode Island. There appear to be few if any experiments in delegating the current prosecution/judicial sentencing function to alternative dispute resolution bodies that involve victims, offenders and offender relatives or mentors and community members. Such alternative sentencing schemes insure victim involvement. Vermont, for example, has replaced probation counselors with reparation officers who work for community reparation boards to resolve misdemeanor charges.<sup>28</sup>

Judges commonly order restitution in Rhode Island Courts. However, it is collected and paid out much like fines and other court costs. As experts have commented, to the defendant's pocket book, there is no difference between a fine (payable to the state)

---

<sup>28</sup> See, e.g., Dooley, M. (1995). Restorative Justice in Vermont: A Work in Progress. Topics in Community Corrections. United States Justice Department, National Institute of Corrections.

and restitution (payable to the crime victim). But to their mind and heart, the difference should be large. Payment of restitution should confront the offender with the costs of his crime, increase empathy for his or her victim, and restore the frayed bonds between the offender and the victim. To get the most out of such court restitution programs, the restitution collection and payment process must be integrated more fully into the correctional experience directly emphasizing the offender victim relationship.

For example, where feasible, offenders might make the final payments directly to their victims accompanied with an apology so that some sort of closure can accrue for victim and offender alike. In some instance, indigent offenders who are unable to pay their victims may be put to work directly cleaning up or repairing the damage of their crimes under the supervision of the correctional authorities.

While it is easy to exaggerate the transforming effect of victim-offender mediation, Rhode Island provided one of the first early examples of such structured meetings between an incarcerated offender and the mother of his homicide victim. In 1994, state prison officials hosted a series of mediation sessions between Suzanne Molhan and the man, Alfred Lemerick, who murdered her son in the course of a robbery that reportedly netted the offender ten dollars. Mrs. Molhan waged a nine-year crusade to confront her son's killer. At the last session, 21 months after the first, Mrs. Molhan reached across the prison table and held the hand that held the weapon that shot her son. According to Mrs. Molhan:

I never wanted Alfred (the murderer) to touch me, ever. I still don't forgive him. Alfred reached over to shake hands, and I responded automatically. He covered my hand in both of his, and I held his in mine. We said goodbye that way.

On the tenth anniversary of her son's murder, Mrs. Molhan recounted to the press how she received no phone calls or cards from any friend or relative who might have been inclined to share their sympathies with her that day. There was one card, however, that arrived not by mail but was read to her over the phone by a Rhode Island prison official:

Dear Sue. I don't want you to think I have forgotten you, because I haven't. I know today is the 10<sup>th</sup> anniversary and I know you must be going through a tough time. I hope our mediation has made this anniversary date a little easier for you. I'm thinking of you. You are not alone.

The card was signed "Alfred."

While the needs and desires of crime victims are varied, some find such direct meetings to be helpful in dealing with their victimization. The criminal justice system should explore allowing for such programs at various stages including disposition, probation, incarceration and parole.

- 6. The *De Novo* two track trial system should be eliminated. Misdemeanants should have the same right to appeal matters of law as do felons.**
- 7. Separate space should be provided for victims and their advocates in all Courthouses.**
- 8. Relatives of victims of homicides should be assisted as soon as possible.**

Police should notify the victim notification agency as to the identities of the relatives of homicide victims as soon as is practical. The agency then should notify designated victim service providers with this information so they can reach out to these victims. Relatives should also be provided with a simple card by police with the numbers of a dedicated homicide survival program that can offer immediate, personal assistance regardless of whether the alleged perpetrator has been apprehended or not.

Representatives of the Sexual Assault and Trauma Recovery Center Bereavement Program, the Rhode Island Victims' Advocacy and Support Center, Justice Assistance and the Victims' Service Unit of the Attorney General's Office should develop a protocol for serving relatives of homicide victims from initial notification of the homicide through whatever long term support and counseling may be necessary.

- 9. The Child Advocacy Center should provide child victims and their parents with assistance in filling out victim impact forms and/or insuring their voices are heard at all stages of the criminal justice system.**

### **III. Victim Compensation: Are Victims Being Made Whole?**

Although many victims suffer extreme financial losses as a result of crime, most crime victims do not. However, as others have pointed out, to many victims, it is not the money taken, it is the taking of the money that matters most to them. In recognition of this, Rhode Island law encourages courts to order defendants to compensate their victims as well as provides for state compensation for select victims of violent crime. The payment of restitution by the criminal to his or her victim restores balance between them, helps to make the victim feel whole, emotionally, if not financially and increases the victim's perception that justice has been achieved.

**Major Finding: many eligible victims suffering out of pocket losses as a result of the crimes committed against them are not receiving court ordered restitution.**

- 1. Many defendants are not ordered to pay their victims for out-of-pocket losses directly attributable to their crimes.**

The failure of the state to notify victims of court hearings, coupled with the low return rate of victim impact forms, deprives the prosecutor and court of necessary

information to determine if the victim suffered financial losses. As a result, restitution is not always assessed. According to victims surveyed, 47% suffered physical injuries with 25.6 % classifying the injuries as “very serious” and 33.3% as “somewhat serious.” 61.5% reported financial losses. Yet the court only ordered restitution in approximately 16% of the cases. Half of the orders were for less than the total loss reported by the victims. As a result, only 4.3% of the victims were satisfied with the restitution order, 69.6% were not and 17.4% weren’t sure or didn’t know.

The failure of the courts to order full restitution is particularly felt by crime victims. According to the survey, most victims were not wealthy, with 18.3% reporting household incomes of less than \$10,001 and another 19.4% reporting incomes between \$10,000 and \$25,000. 17.2% were unemployed and another 10.8% were retired or disabled (7.5%). In addition, restitution is not ordered as a condition of parole or incarceration.

**2. Some restitution orders imposed in court are not entered into the Central Registry accounts for collection.**

Some victims may be ordered restitution but the orders are not entered into the court accounting system for collection. Specifically, when the case is filed in Superior Court with a condition of restitution, the orders are not regularly entered into the system for collection. As a result, the court will be unable to credit any payments made by offenders to the proper victim account. Therefore the victim will never receive payment.

**3. Victims do not always receive restitution paid by defendants in compliance with court orders.**

Even if entered into the system and paid by the defendant, some victims will not receive it because officials cannot locate them to send them the checks.

**4. Rarely do victims exercise their right to collect unpaid restitution in the civil courts.**

The Central Registry is located in the Providence County Courthouse. It is charged generally with collecting and disbursing restitution from both misdemeanants and felons who are under the supervision of the state probation service of the state Probation and Parole Department. Cases are entered into the Central Registry based on an “Agreement Form” completed by defendants and probation counselors. One copy of the form is given to the Central Registry, another is given to the probationer and a third is given to a probation counselor. The form is filled out after the court orders the defendant to pay restitution and the amount is set, either at the time of disposition or subsequently at a restitution hearing or upon agreement of the probationer. The form contains information on the amount owed, due date and payment plan (e.g. weekly, bi-weekly, monthly, etc.). Payments are made directly to the Central Registry by money order or certified check.

Each case is recorded and tracked by the court case number as well as the defendant's name. They are not tracked by the victim's name. One defendant may have multiple cases in the Central Registry for the same criminal case if there are multiple victims. The Registry accepts both full and partial payments. It does not distribute partial payments to the victim, however, until at least \$100 has been collected. Registry officials explain that previously they automatically paid out partial collections of any amount but victims expressed dissatisfaction with receiving payments of trivial amounts. Each check issued to the victim contains on the stub the case number and the amount ordered paid as well as the number of the Registry Office.

The Registry maintains a collection file that was computerized in 1986. Probation counselors also have a terminal to access data in this file. Generally, the file contains the names of the defendants, case numbers, amounts ordered and amounts paid as well as date of last payment. Each file also contains the name of the probation counselor assigned the case. Once entered into the system, the cases remain open until the Registry is officially notified in writing from Probation that the case has been ordered closed. The Registry or Probation Department cannot automatically extend criminal cases simply because court restitution has not been paid as ordered. The court must find that the nonpayment is willful. In order for the collection (probationary) period to be extended, the case must be brought back to the court before the payment is due and the court must specifically order the case extended for a period of time. In Superior Court, there is a Special Magistrate who hears restitution cases, both determining amounts to be paid and hearing cases where probationers are charged with failing to pay amounts ordered. Neither probation nor the Registry officials inform victims of such court hearings.

The Registry file is programmed to provide an advance list of cases due to be terminated in 30 to 90 days. The list is sent to probation to alert counselors of the nonpayment. Court hearings are then set for non-payers. The Registry furnishes to the court each defendant's payment history. For example, in January 2001, the registry provided a list of all cases due to be terminated the following March with unpaid balances. The list included 59 cases with outstanding restitution ranging from a high of \$11,182.40 (due on 3/21/2001) to a low of \$.02 (due 3/23/2001). Total balance due according to the list was \$46,057. Each case included the name of the probation counselor assigned the case.

If the offender fails to appear at the court hearing for nonpayment a warrant may be issued for his or her arrest. If subsequently arrested and bailed, the bail may be used to pay off unpaid balances.

#### **Central Registry Restitution Collections**

<b>Year</b>	<b>Number of Checks Issued</b>	<b>Amount Paid to Victims</b>
1998	8,629	\$1,621,570.28
1999	8,242	\$1,911,171.99
2000	7,848	\$1,804,771.50

Currently, the largest extant order is for \$958,819.94 ordered to be paid to 42 different victims. The defendant, convicted of stock embezzlement, began paying on the order in 1994 and had paid \$70,000 as of January 2001.

Victims include institutions as well as individuals. Banks comprise the largest category of institutions owed restitution.

The computerized system maintained by the Registry is not set up as a business management or accounting system. It does not, for example, provide a running update of accounts receivable, but only monies actually collected. It does not readily provide how many defendants (as opposed to cases) owe restitution. As a result, it is difficult to determine the actual collection rate of the Central Registry accounts. We cannot readily determine the number of victims paid or how much each received versus how much each defendant was ordered to pay. The system only tracks the number of checks issued. One victim may receive multiple checks.

Based on official estimates of account receivables, ten million dollars as of 2001, one could estimate that collections in 2000 represented a collection rate of slightly less than 20%. However, the actual collection rate is much higher if we eliminate inactive cases that would typically be written off as non-collectible debt in standard accounting systems. The collection rate of active cases is undoubtedly much higher than 20%, although this cannot be documented by the existing automated system utilized by the Registry.

A November 20, 2000, print out of the Registry file contained 186 pages with approximately 52 cases per page or approximately 9,672 open cases. However, many of the cases included have been inactive for up to twenty years. In other words, the last payment received was in 1981. In several instances, a Registry official identified probation counselors listed as supervising the probationers who had retired over a decade ago. This could mean at least two things. First, the defendant could have absconded years ago and a warrant for his arrest is still pending. In such cases, the case, though inactive, is technically open because the defendant has not been legally absolved of his or her obligation to pay the outstanding balance. Once apprehended, the defendant could be ordered to resume payments. Second, the case could have been legally terminated for a variety of reasons, even with an open arrearage, and the Central Registry was never informed by probation to close out the case. The Registry does not have the resources to double check cases to clean up its file. Arrearage amounts included in the Registry file range from a penny to \$11,024. The Registry does not notify victims if offenders stop paying because they abscond or their cases are closed at the end of their probationary period.

If probationers are ordered to pay restitution but are on a “probation hold” status, their cases are usually not entered into the Central Registry. Probation cases are “held” if they are currently incarcerated. When they are released, the “hold” is removed and the offender is available for probation supervision and enforcement of probationary conditions, including the payment of restitution. Many offenders are sentenced to split



sentences that include time in prison followed by periods of probationary supervision. The probation department maintains a unit in the state prison that meets with defendants prior to their release to establish their conditions of supervision, including which probation office will supervise them depending upon where they will be living. At this point, the Central Registry is given the "Agreement Form" for entry into its case collection accounts. As a result of §12-19-32 (originally suggested by Registry officials), an inmate's ability to be classified and processed in the institution depends upon his or her having addressed restitution issues. For this reason, often inmates may seek to establish restitution payment plans before their release.

Although offenders may be allowed to earn money on work release or actually serve time in a home confinement program and work during the day, there is no requirement that a portion of his or her earnings or income be secured for fulfillment of his or her restitution obligations.

If defendants' cases are filed in Superior Court on condition of payment of restitution, the order is not entered into the Central Registry. Because no probation counselor is assigned a filed case, no one completes the Agreement Form for entry into the Central Registry. According to Registry officials, they may find out about the case if the defendant or victim inquires about it. Registry officials then track down the case and enter the form themselves. In 1999, there were 51 felony cases and 26 misdemeanor cases filed in Superior Court. It is not known how many included restitution orders.

Justice Assistance is responsible for the collection and disbursement of restitution in cases that are ordered filed in District Court.

#### **Justice Assistance Restitution Collections**

<b>Year</b>	<b>Cases Filed with Restitution</b>	<b>Collections</b>
1998	378	\$58,319
1999	410	\$55,016
2000	534	\$104,050

In 2000, Justice Assistance monitored restitution orders totaling \$123,226.96. In other words, the collection rate was a bit over 84%. This means that all victims received 84% of what was ordered or 84% of the victims received their restitution orders in full and 16% received nothing or, most likely, a combination of the two. Defendants ordered to pay restitution owed, on the average, \$194.85 each. At the end of 1999, to increase collections, Justice Assistance imposed a \$200 supervision fee for defendants under its supervision. It waived the fee, however, if the defendant paid his or her restitution in a timely fashion. This accounts, according to officials, for the increased collections between 1999 and 2000.

Unlike the Central Registry, restitution is not paid out to the victim until the defendant pays in full. As a result, in 2000, Justice Assistance paid out only \$93,071.36 of the \$104,050.55 collected. Unlike the Central Registry program, once restitution is

ordered, Justice Assistance tracks the case for 24 months. If the money ordered is still not paid at that time, Justice Assistance contacts the victim and asks permission to close its books. If partial amounts have been paid and the victim agrees, the partial payment is disbursed to the victim. The case can be reopened if the defendant is arrested on a warrant, for example, and the case is extended for payment.

Like the Central Registry, Justice Assistance maintains a tickler system to alert staff 30 days before final payment is due. Because 30 days was found to be insufficient to get some cases back before the court, new lists are being generated for payments due in 90 days. Because defendants in filed cases are not under probation supervision, Justice Assistance Case Managers must bring non-payers back to court.

Justice Assistance informs victims orally about civil judgements lodged against their defendants as well as their possible eligibility for crime indemnity funding. Justice Assistance officials were unable, however, to recall any cases where they were aware of victims using these civil judgements as the basis for pursuing suits against their defendants for unpaid restitution balances. Given that the average order is under \$200, there may be little economic incentive for victims to pursue such suits.

Both Justice Assistance and the Central Registry collect monies that they are then unable to disburse to victims because of incorrect victim addresses. As a result, after holding the money for a certain period of time, they turn it over to the State Treasurer who runs newspaper ads to try to locate the victims. Failing that, the money is turned over to the state. Registry officials are currently preparing a list of accounts to turn over to the Treasurer's Office. Although they are supposed to do so annually, they have not had the resources to assemble the list for more than several years. Registry officials estimate that they currently have over 1,000 cases involving well over \$100,000 in payments received. Justice Assistance turns over its unclaimed accounts annually.

### **Victim Compensation Recommendations:**

- 1. The Central Registry files should be reviewed so that files pertaining to closed criminal cases can be removed and victims notified that the cases have been terminated and they must pursue civil suits to collect any monies due them.**
- 2. All cases recently filed in Superior Court should be reviewed to determine if restitution orders were included. If so, they should be entered into the Central Registry.**
- 3. Restitution should be required by statute as an element of all sentences or as a condition of diversion, filing or conditional dismissal.**

The apparently lower Registry collection rate is not, it should be emphasized, due to the lack of commitment or efforts of personnel specifically assigned the task of

collection. In fact, the relatively small staff at the Registry, equipped with an outdated, 1986 automated accounting system, is doing more than can be expected. One of the major problems it faces, however, like most of the victim service providers, is that its efforts are not fully integrated into the ongoing operations of the criminal justice system. First, many court restitution orders never reach the Registry. For example, currently no one is responsible for entering restitution orders made in Superior Court when the case is also filed as a disposition. Similarly, cases are not entered until an incarcerated offender is released on probation, even if that offender has resources to pay his restitution and is allowed to earn money on work release. Further, Parole does not incorporate restitution orders into its conditions.

Mandatory restitution orders will insure victims are ordered restitution as an element of the sentence. Victims who are unable or unwilling to request restitution will not be penalized and therefore their perpetrators rewarded. Further, mandatory restitution will allow the Parole Board to order restitution as a condition of parole and the Department of Corrections to order restitution as a condition of work release, home confinement and other relevant programs. Many states mandate restitution as a condition of sentencing. Perhaps the most sweeping is North Carolina (N.C. Gen. Stat. §515A-1343).

#### **4. Restitution orders should include civil-like awards, beyond simple out of pocket loss.**

By case and/or statutory law, restitution orders vary across the country. Many states are more liberal than Rhode Island in what they allow victims of crime, including damages that are usually considered civil in nature such as pain and suffering. North Carolina, for example, defines restitution as “such losses and damages as ordinarily recoverable against a defendant in a civil action (N.C. Gen. Stat. 515A-1343(d) (1983)).” Similarly, Alabama’s statute allows for pecuniary damages that may be recovered against a defendant in a civil action (Ala. Code 515-18-66 (1982)). Other states provide for specific punitive restitution beyond the actual out of pocket loss to the victim. Washington, for example, provides that restitution be twice the offender’s gain or the victim’s loss (Wash. Rev. Code Ann. S 9A.20.030(1)(Supp. 1986). Nevada includes indirect damages (Nev. Rev. Stat. §209/4825 (1985)). Other states allow restitution for the victim’s “inconvenience” (LA. Code Crim. Proc. Ann. Art 895.1(A), (B),(5) (West Supp. 1995). Absent specific legislation, some state appellate courts have approved civil like damages in Washington, Nebraska, Arizona and Pennsylvania.<sup>29</sup> Rhode Island’s statutes should similarly provide for such reasonable additional restitution awards.

It is apparent that even the automatic civil judgements ordered against defendants have not sufficiently enabled victims to use the civil courts to receive compensation for their losses even when offenders do not comply with court ordered restitution payments.

---

<sup>29</sup> See, e.g., *State v. Morgan*, 504 P.2d 1195 (1973), *State v. Brehens*, 285 N.W.2d 513 (1979) (pain and suffering allowed), *State v. Garner*, 566 P.2d 1055 (Ariz. Ct. App. 1977)(not limited to easily measured or liquidated damages), *Commonwealth v. Balisteri*, 478 A.2d 5 (1984) (upheld order for defendant to pay man he blinded \$25 a week for 19 years although restitution not based on actual determined losses).

Even if §12-28-5 were broadened beyond “conviction of a felony after a trial by jury,” it does not appear victims would be any better served. Victims do not pursue these remedies because, as a Justice Assistance official points out, the initial cost of hiring a lawyer is prohibitive. For indigent or needy victims, free legal services are generally unavailable.

On the other hand, legislation similar to that in North Carolina or other states that incorporate civil-like damages in criminal restitution orders would go a long way to realizing the intent of the Victim’s Bill of Rights and the state’s Victims’ Rights Amendment to the Constitution. More victims would be ordered restitution and they would have a greater chance of collecting it. In addition, victims would not have to pursue their claims independently in the civil courts.

**5. There should be one central Restitution Collection and Disbursement Agency responsible for the collection and dissemination of all court, corrections and parole restitution payments and disbursements.**

The agency should receive court restitution orders directly from the court clerk at the time of sentencing or when they are determined by the court, Special Master, or Parole Board. By entering the orders directly, all orders will be entered, not just those with probation counselors assigned. The agency should adopt the policies of the Registry and pay out partial payments in reasonable increments to the victims as they are received by the agency. The agency should adopt the policies of Justice Assistance and inform victims when cases become inactive.

The payment accounting system should be accessible by both victim and offender names so victims can check their orders without having to know the offender’s name. At all times the agency should be able to determine its total accounts receivable by all defendants collectively and individually as well as the precise number of victims receiving payments. The agency should notify all victims of the orders, the payment schedules and the procedures for disbursement of the monies to victims. Victims should be notified of any actions taken that effect the order including any hearings held for nonpayment and payment period extensions by the agency monitoring the cases. If no agency is monitoring the case, the agency should send the victim notifications itself. These hearings should be considered sentencing hearing for which victims have the right to speak or submit a written statement regarding the crime impact and the payment of the restitution. If the case is terminated before full restitution is paid, victims should be so informed with specific information regarding their civil options.

**6. Inducements to encourage quick and complete restitution payments should be instituted such as the supervision fee waiver given by Justice Assistance to defendant’s who meet their restitution obligations in a timely fashion.**

The Department of Corrections, for example, should establish job training programs, paid work crews or other opportunities as a last resort so that indigent offenders can earn money to pay their victims consistent with court orders. There are a number of models for such programs around the country.<sup>30</sup> A portion of income earned by inmates as a result of work release should be earmarked to fulfill restitution obligations. The Restitution Collection and Disbursement Agency should receive all payments made by defendants until the restitution order is paid in full before additional payments are collected for other criminal court ordered fines, fees, and costs, other than child support payments.

The Restitution Collection and Disbursement Agency should be granted broad powers to execute wage attachments as well as property and tax liens to collect restitution for crime victims.

**7. Victims should be paid first before defendant payments are applied to court costs, fines, fees and other financial obligations except for child support.**

Many states have enacted specific legislation providing for victims to be placed at the head of the line to receive payments made by defendants. Wisconsin provides one example (Wisc. Stat. Ann. §973.20(0)(a)).

**IV. Victim Safety: Are Victims Being Protected from Harm and the Threat of Harm?**

Increased victim participation in the criminal justice system amounts to a Pyrrhic victory at best, if it results in increased harm or threat of harm to the victim. Not only does the Victim's Bill of Right specifically mandate victims receive protection from such harm, but victim participation in and of itself should increase safety by enabling the criminal justice system greater ability to arrest, prosecute and hold offenders accountable.

**Major Findings: Victims of crime are not being afforded adequate protection in some areas of the criminal justice system.**

**1. The failure of the state to notify some victims of crime, or to notify them in a timely fashion, endangers some victims.**

The failure to notify victims as required by law can endanger particularly vulnerable victims, such as the victims of domestic violence, sexual assault and/or stalking. The following case obtained during a random review of parole hearings before the Board illustrates the danger. Despite its mandate and an accompanying mandate that police assist in locating victims of inmates up for parole hearings, the victim was one of many not located for the parole hearing. The inmate involved is a 24-year-old domestic violence perpetrator, convicted of kicking in his victim's door and strangling her. His

---

<sup>30</sup> See, e.g., Klein, A. (1997). Alternative Sentencing, Intermediate Sanctions and Probation, 2<sup>nd</sup> Edition. Cincinnati, OH: Anderson Publishing Co. 151- 193.

victim is a 22-year-old woman who has two young children with the offender. At the time of the offense, the perpetrator had an active warrant for an unrelated disorderly crime, issued when he failed to show up in court for a prior hearing. In addition, the Parole Board file indicated that the defendant had been incarcerated at least twice before, first for a robbery in 1997, and then again for an assault in May, 1999. His current sentence began in September 2000. As a result of the Parole Board decision, the inmate will be released in the summer of 2001.

The chances are that this high-risk offender, unlike the Providence Police and Parole Board, will be able to contact his victim-- to her and her children's possible detriment. Even if the defendant does not resume contact, the victim will not know when she will be entitled to receive child support and other benefits that may be due her and her children upon his release.

Despite the legal mandate of §12-29-4(a)(3), neither the bail commissioner nor the court clerk routinely provides a copy of the No Contact Order to the victim at arraignment. The victim may be informed of it later, but a hard copy is rarely given to the victim immediately after it is issued. Unlike protective orders that are issued as a result of the victim petitioning the court for protection, No Contact Orders are issued automatically in the victim's absence. According to a court advocate, in smaller towns, police may deliver a copy to the victim, but this is not done in larger towns and cities. The official No Contact Order form, provided by the court, is color-coded and contains four sheets. The gold sheet goes to the police, the green sheet goes to the defendant, the pink sheet goes to the victim/witness and the top sheet goes into the court file. Officials were unsure who is responsible for sending the pink copy to victims. Victims do eventually receive written notification after court arraignment from Coalition Advocates that includes information regarding the No Contact Orders.

As a result, victims may not know immediately when the orders are issued that the suspects are barred from re-contacting them. They may even allow suspects to return to their residences to continue to live with them. Not only can this subject victims to continued abuse, but also increases the likelihood that they will not testify against their partners at any subsequent trial.

Like protective orders, No Contact Orders are filed in the RONCO system located in the Attorney General's Bureau of Criminal Identification Unit. Courts fax or deliver the orders directly to the unit no later than the end of the day of issuance. The bail commissioner or court clerk faxes copies of the order (as well as protective orders), usually at the end of each court day. As a result the orders are not entered immediately so that if the defendant immediately violates the order after leaving court or the police station, local police, as well as the victim, may not know of the order's existence.

There are at least 5,706 No Contact Orders issued every year in Rhode Island.

Other victims may be endangered by the untimely notification of inmates released before conviction. The current victim notification process is time consuming. While it

meets the letter of the law, it fails to provide vulnerable victims, for example, with timely enough notice of the offender's release to be able to take precautionary actions if necessary. Lack of advanced warning to victims of an inmate's release pre-trial has resulted in homicides in many jurisdictions around the country. One such homicide became the impetus for the establishment of the Victim Notification and Notification Everyday system (VINE), an automated victim notification system now operational in nine different states' correctional departments.

At present, the Department of Corrections does not inform victims of the release of inmates who are not paroled. The Parole Victim Coordinator has, however, begun to inform victims when non-paroled inmates will be released.

- 2. Victims of crimes of violence, including victims of chronic violent and/or sexual predators, are not being adequately safeguarded between arrest and trial.**
- 3. Most victims of domestic and sexual violence do not receive benefit from existing dedicated prosecution programs.**
- 4. Many victims of domestic violence are not being safeguarded against their perpetrators after court adjudication or findings of fact.**

Danger is not a statutory consideration in cases of crimes against person such as domestic violence, sexual assault or stalking. The release of most suspects without regard to the threat they pose to their victims is in conflict with the Victim's Bill of Rights granting victims the right "to receive protection from harm and threats of harm arising out of the victim's cooperation with law enforcement and prosecution efforts (§12-28-3(3))." Under current law, the courts may only consider the issue of danger in regard to certain drug crimes. As a result, there are few bail hearings, limited to a relative handful of serious felony cases. There were 585 bail hearings held in 1999 out of 30,000 cases prosecuted in the courts. More than two thirds of the bail hearings involved victimless crimes!

The state's Domestic Violence Prevention Act, passed in 1988, specifically recognizes the "likelihood of repeated violence directed at those who have been victims of domestic violence in the past." However, its remedy is to mandate the institution of No Contact Orders. No Contact Orders do not provide the same level of protection as detention for high risk, chronic defendants.

In 1999, 455 defendants were charged with violating No Contact Orders. Whether or not this number represents all violators, there is no doubt that victims would be safer if these violations were prevented in the first instance. The ability of defendants to violate court No Contact Orders also tells victims that the state is unable or unwilling to protect them, making their active cooperation with prosecutors less likely in the future. Research documents that victims of domestic violence are less willing to cooperate with police and

prosecutors if they believe the criminal justice system will not protect them or does not take their victimization seriously.<sup>31</sup>

Once domestic and sexual violence cases reach court, most are not handled by the prosecutors specially trained and suited to prosecute them. The Domestic Violence Prosecution Unit consists of three prosecutors and the Victim Coordinator discussed earlier. In addition, while there is not a special unit for sex offender prosecutions, one experienced prosecutor specializes in these cases and has a non-attorney assistance. However, these resources are limited to a minority of domestic and sexual violence cases prosecuted in the state.

This Domestic Violence Unit is limited to handling select felony and appealed domestic violence cases and even fewer sexual assault cases. This represents a tremendous gap that puts a large number of victims at risk. Studies have concluded that offender risk cannot be predicated on the seriousness of injury of the presenting case. Victims may be in greater risk for lesser offenses charged, including common misdemeanor offenses. Risk is best determined by offender characteristics including past record and age.<sup>32</sup>

Further, of all domestic violence cases, the most difficult to prosecute may be misdemeanor, not felony cases where the specialized prosecution unit concentrates its efforts. Generally, police investigation is more limited and resources available for these cases are minimal. Without the development of special police evidence gathering and prosecution protocols, successful prosecution rests exclusively on the individuals least able to shoulder the responsibility, namely the victims.

According to the Domestic Violence Training and Monitoring Unit, between 1980 and 2000, there were 76 domestic homicides and 18 related suicides in the state for a total of 98 deaths. The state averages more than four domestic violence related deaths a year.

While the Rhode Island Coalition Against Domestic Violence provides uniformity of advocacy in misdemeanor cases (except for some appealed cases), no such uniformity exists in their prosecution, exacerbated by the *de novo* appeal system that bars vertical prosecution. Further, a previous study found a critical weakness in the prosecution of domestic violence cases handled by solicitors: "Police and police prosecutors were critical of the abilities of solicitors to handle domestic violence misdemeanors." It made a number of suggestions for improvement including rotating solicitors through the Attorney General's special domestic violence prosecution unit, establishing a statewide prosecutor/solicitor/police prosecutor domestic violence task force and, among other things, the establishment of standards for solicitor training in domestic violence prosecution.<sup>33</sup>

---

<sup>31</sup> Buzawa, Hotaling, Klein and Byrne, op. cit.

<sup>32</sup> See, e.g., Klein, A. (1996); Buzawa, Hotaling, Klein and Byrne (1999), op. cit.

<sup>33</sup> BOTEC, op. cit. p. 46.



As a result of current prosecution practices, almost 30% of sexual domestic violence charges are not prosecuted. In 2000, of 4,846 domestic violence cases disposed of District Court, only 286 or 5.9% were jailed. This is much lower than in, at least, some disparate cites across the country. In Norfolk County, Massachusetts, for example, the jail rate is 11.885% for misdemeanor violation of protection orders<sup>34</sup> and in Lincoln, Nebraska, it is 39% for misdemeanor assaults and violations of protective orders.<sup>35</sup>

**Dismissal Rates of Domestic Violence and Sexual Assault/Child Molestation Cases, 1999\***

Case	Number	Dismissal	Percent Dismissed
Sexual Assault/Child Molestation	211	58	27.50%
Domestic Violence	4,570	1,337	29.25%
Total	4,781	1,396	29.00%

\* Uniform Crime Report, 1999, 132-133.

Inadequate prosecution discourages victim cooperation as victims see little gain in terms of their safety or well being as a result of court action. Advocates, no matter how good, cannot serve as a substitute for prosecutors, adequately trained and equipped to prosecute cases. Poor prosecution leads to a vicious cycle. Poor prosecution leads to lack of victim cooperation that, in turn, discourages solicitors from prosecuting these cases and compromises their ability to do so. The large number of domestic violence cases filed in District Court may be indicative of dysfunctional or inadequate prosecution by solicitors. From 1994 to 1999, the filing of domestic violence cases has increased from 3% to 16%.

Although the legislative purpose of the Domestic Violence Prevention Act provides, among other things, that domestic violence is “a serious crime against society” and the purpose of the law is “to assure victims...the maximum protection from abuse,” the Act only specifies that “in addition to any other sentence imposed or counseling ordered,” the batterer should be ordered to attend “a program with demonstrated expertise in counseling of domestic violence offenders (§12-29-5).” In many instances, offenders do not even receive this.

According to the State Police, 762 domestic violence cases were filed in 1999. According to the 1999 Report to the Judiciary, 491 domestic violence defendants’ cases were filed with orders to complete domestic violence counseling. In other words, it appears that 271 domestic violence cases, slightly more than 35%, were filed without mandated orders of domestic violence counseling in 1999.

There is little evidence that mere participation in such counseling programs protects victims from harm or the threat of harm. For this reason, the Batterers Intervention Standards Oversight Committee established by §12-29-5.1 requires that victims be informed “that completion of a batterers intervention program is not a

<sup>34</sup> Bass, A., Nealon, P. & Armstrong, D. (September 25, 1994) The War on Domestic Violence. Boston Globe.

<sup>35</sup> Family Violence Council (2000). Report on Domestic Violence for 1999 for Lincoln/Lancaster County. Lincoln Medical Education Foundation, Inc.

guarantee that the abuse will stop. In addition, programs “are obligated to report any credible threat (by abusers) to harm self or others” and take “reasonable efforts” to notify any identified victim (Standards (V)(A)(2) (August 4, 1998)). It does not appear that batterer counseling programs routinely reach out to victims.

Several thousand domestic violence offenders are sentenced to probation each year. However, less than half of them receive supervision specifically designed to hold them accountable and protect their victims. The proportion of convicted sex offenders receiving specialized probationary supervision is much lower.

While the probation department has established a special domestic violence supervision unit, less than half of all convicted domestic violence offenders sentenced to probation are assigned to it. Unlike regular probation, the specialized supervision program is victim oriented in many respects. The probation domestic violence supervision unit provides victims with a packet of information including resources for them, safety planning material. The letters inform them of the name of the supervising probation counselor. The letters inform victims if probationers have been sent to batterer intervention programs although they do not caution them that the programs will not necessarily provide for their safety. The unit stays in touch with victims and sees offenders intensively.

However, most offenders probated for domestic violence are spread among probation counselors with much larger generic caseloads of up to 400 probationers. Victims of these probationers do not receive any special notice or regular contact from counselors. The unit has not expanded due to training and resource limitations.

The special sexual assault supervision unit is limited to the most serious cases. Most sexual offenders, approximately 87%, are supervised in larger, generic caseloads. According to officials of the Sexual Assault and Trauma Resource Center, probation counselors do not work closely with its sexual assault victim advocates in regard to the victims of these cases. The probation program is offender, not victim focused. Where other jurisdictions have developed containment programs for sex offenders in the community, the probation department appears to rely on its own supervision and offender counseling to safeguard the community.

Victims of abusive probationers also experience difficulty in obtaining police cooperation in arresting probationers who violated court orders. Judges routinely impose No Contact Orders against probationers convicted of domestic violence or sexual assault as conditions of probation. Some police, however, will not enforce these No Contact Orders, as they are not issued pursuant to §12-29-4. When victims report violations of the orders, police inform them that they must report them to probation. However unlike police, probation counselors are not available 24 hours a day and do not have arrest powers. Probation counselors may take the case back before the court as a probation violation, but this takes time.

In 1999, almost 21% of all persons arrested for domestic violence in Rhode Island were already on probation at the time. The failure of all identified sex and domestic violence offenders to receive specialized supervision puts victims at continued risk, insuring the continued recycling of the same offenders through the criminal justice system.

Finally, neither the Department of Correction nor the Parole Board notifies victims of abuse of the release of a restrained batterer from custody unless the victims who have obtained the orders against the defendants are also the victims of the specific charges for which the defendants were incarcerated. Otherwise they are ineligible for release notifications.

### **5. Victims of abuse are not receiving the full benefits of court protection assistance programs in civil court proceedings.**

The civil protection system designed to prevent violence and abuse is reaching relatively few victims. Those who obtain initial orders quickly abandon them. Further, police are not arresting those who violate the orders. As a result, relatively few victims are being protected through this legal process despite the efforts of Coalition Advocates, Family and District Court Judges, police and the Attorney General's Crime Bureau.

Further, the orders that are issued are not entered into the FBI's Protection Order File. Rhode Island is one of only a dozen states that fails to enter its orders into the National Crime Information Center. As a result, Rhode Island victims traveling out of state run the risk of having out of state police ignore the Rhode Island orders because they cannot be confirmed through the national file. Further, restrained Rhode Island abusers who are prohibited from buying or possessing firearms can easily evade these prohibitions by purchasing or securing a firearm outside the state. Under existing federal law, the gun dealer is only responsible for checking whether the potential buyer has a protective order against him in the national file. The dealer is not required to check individual state files even if s/he is aware the buyer comes from another state. Just two years ago, a restrained abuser in Massachusetts, whose gun was confiscated by Massachusetts' police, was able to purchase a firearm in New Hampshire because his Massachusetts order had not been entered into the national file. He used the gun to beat, shot and kill his wife as their young son watched helplessly.

Civil protective orders, first enacted in Pennsylvania in 1976, are designed to afford individuals protection before they are abused. In point of fact, studies unanimously agree, the vast majority of petitioners are repeatedly assaulted before they petition the court for civil orders.<sup>36</sup> Nonetheless, with little exception, respondents are subject to civil orders alone. Successful civil petitions for abuse do not trigger criminal investigations or

---

<sup>36</sup> See, e.g., Harrell, A. & Smith, B. (1996). Effects of Restraining orders on Domestic Violence. In Buzawa, E. & Buzawa, C. (Eds.) Do Arrest and Restraining Orders Work? Thousand Oaks, CA: Sage, 214-242; Keilitz, s., Hannaford, P. & Efkenman, H. (1997). Civil Protective orders: The Benefits and Limitations for Victims of Domestic Violence. Washington DC: National Center for State Courts & National Institute of Justice.

criminal charges filed against respondents. Whatever protections these orders afford depend upon their utilization by the victim. In Rhode Island, the number of victims who request civil protective orders is comparatively low and the number who retain orders once initially obtained is even lower.

**Abuse Petitions Filed: 1999**

<b>Court</b>	<b>Number</b>
Family Court	2,769
District Court	793
<b>Total</b>	<b>3,562</b>

According to a previous report specifically examining measures to respond to domestic violence and violence against women, the relatively limited utilization of civil protective orders in Rhode Island may reflect the criminal justice system's reluctance to accommodate victims.

Our interviewees, however, saw serious flaws in Rhode Island's system wide approach to crimes against women. We repeatedly heard that, no matter how good Rhode Island's domestic violence and sexual assault laws were on paper, they were not properly or evenly enforced. In particular, advocates decried the criminal justice/restraining order system as "user hostile." "Victims often feel helpless," was a typical complaint. "Most of them have no faith in the legal system." Advocates noted this hostility in almost every aspect of the legal system. One interviewee told us that domestic violence advocates in district courts do business in the hallways because there is no established office for them in the courts- a potent symbol to victims of a lack of concern for their immediate safety and their plight as crime victims....<sup>37</sup>

"User hostile" systems and/or environments can have a specific negative and dramatic impact on victims in accessing and maintaining protective orders. Several studies suggest that the utilization rates are strongly influenced by victim perceptions of the court and the criminal justice system's support, concern and commitment for their protection. These perceptions can be influenced by the court surroundings, the way the hearings are held, even the mannerisms and tone of the judges hearing the petitions.<sup>38</sup> Victim perceptions also determine whether or not they will request that temporary orders be extended.<sup>39</sup>

---

<sup>37</sup> An Evaluation of Rhode Island's Violence Against Women STOP Formula Grants, September 6, 2000, Cambridge, MA: BOTEC Analysis Corporation.

<sup>38</sup> Ptacket, J. (1999). Battered Women in the Courtroom: The Power of Judicial Responses, Boston, MA: Northeastern University Press.

<sup>39</sup> Hardeman, J. (1995). Implementation of the Abuse Prevention Act, Waltham, MA: Brandeis University.

With the exception of Nebraska, Rhode Island has the lowest per capita issuance of civil protective orders in a sampling of jurisdictions around the country. One of the reasons that may account for the relatively low number of abuse orders issued in Rhode Island is that pursuant to an arrest for domestic violence, victims are ordered automatic No Contact Orders, making it unnecessary for many to petition the court independently for civil orders. On the other hand, in Massachusetts only a small percentage of the restraining orders are issued in conjunction with an arrest.<sup>40</sup>

#### Abuse Orders Issued Per Capita

Jurisdiction	Population	Number of Orders	Orders Per Capita
Rhode Island (1999)	988,000	3,562	36 per 10,000
Massachusetts*	6,147,000	45,000	73 per 10,000
Maine (1996)	1,244,000	5,888	47 per 10,000
Arizona (1999)	4,669,000	36,648	78 per 10,000
San Diego (1999)	1,221,000	10,000	122 per 10,000
Nebraska (1999)	1,663,000	5,000	30 per 10,000

\*Average number of orders issued per year 1993-1999

It should be noted that the percentage of abuse victims petitioning the Family Court is far higher than those petitioning the District Court. Studies have found that generally a slight majority of protective order petitioners are NOT married to their abusers. Based on this, one would expect an equal number of petitioners in the District as well as Family Court. However, District Court orders represent only 22% of all order requests in the state. It appears that victims may find the District Court less accommodating than the Family Court.

In addition to a low per capita issuance rate, the “retention rate” of civil abuse orders is also low in Rhode Island. The court’s initial *ex parte* order is good for less than a month. To obtain a three-year order, the victim must return to court for a subsequent hearing where the respondent has the right to challenge both the petition and remedies sought by the victim. The percentage of orders extended at the subsequent hearing is considered the “retention rate.”

#### Family Court Abuse Orders: 1999

Abuse Orders	Number
Petitions	2,022
Denied at Initial Hearing	184
Denied at Subsequent Hearing	75
Pending*	189
Total Initial Orders Issued	1,574
Orders Dismissed	1,089
Orders Retained	485

<sup>40</sup> Klein, A. (1996). Court Restrained Male Batterers. In Buzawa, E. & Buzawa, C. (Eds.) Do Arrest and Restraining Orders Work? Thousand Oaks, CA; Sage. 192-214 (A study of 644 Massachusetts orders found only 10% were issued in conjunction with an arrest).

\*Includes continued hearings, non-service of orders, etc.

In other words, only 560 victims returned to Family Court to request the issuance of a three-year order. Of these petitioners, 485 obtained them. Another 300 returned to court to ask the order be dismissed. Rhode Island Coalition Against Domestic Violence Advocates encourage women to come to court even if they do not want their orders extended. The overall retention rate represents only 24% of all victims who initially petitioned the court for protection from abuse. It represents only 31% of victims who were granted initial orders, excluding the 189 with cases still pending. While retention rates vary around the country, jurisdiction to jurisdiction, Rhode Island's appears to be among the lowest. Comparable figures were not available from the State's District Court.

#### **Protective Order Retention Rates Across the Country**

<b>Jurisdiction</b>	<b>Return Rates</b>
Rhode Island (1999)	31%
Reading, Pa. (1992)	80%
Orange County, CA. (1992)	39%
Denver and Boulder, Co. (1996)	60%
District of Columbia (2000)	69%
Quincy, Ma. (1995)	80%

A study of abutting courts in Massachusetts with widely different retention rates of 80% and 20% concluded that the difference was attributable to the fact that the victims found the former court to be "user friendly" and supportive while the latter was found to be neither. The former court provided a special room for victims to file for orders. They were provided with assistance from trained staff. An area was provided for young children to color and read while petitioners were before the court. A representative of the District Attorney's Victim/Witness Program met with all victims before they were escorted en masse to the court to petition for their orders. The Victim/Witness Assistant explained what the orders could and could not do. She also encouraged them to file criminal complaints if appropriate and offered to assist them. In court, the judge heard each victim's petition at the bench where the hearing was recorded for the record but not audible to the public. Special sessions for petitions were held at 9:30 a.m. and 1:30 p.m. each day so victims did not have to wait around to be sandwiched in between other court hearings. If orders were issued, victims were escorted back to the special office to get a copy of their order. If their abuser was also present, he was ordered to remain in the courtroom until the petitioner received her copy of the order and safely exited the courthouse. In many cases, the petitioner saw court secretaries enter the order into the state-computerized registry so they understood that the orders were immediately available to police across the state.<sup>41</sup>

According to the figures police report to the Domestic Violence Training and Monitoring Unit, police enforcement of civil protective orders is spotty. Police reported in 1999, for example, that they made 5,706 arrests for domestic violence. In 450 cases, the victims had protective orders against their abusers. Yet police reported they made only 383 arrests for violations of protective orders. In other words, in at least 67 cases,

---

<sup>41</sup> Hardeman, op. cit.

although police arrested a suspect for a crime of domestic violence, they did not also charge the suspect with violation of an extant order. The failure of police in almost 15% of the cases to arrest for violations of orders may make subsequent prosecutions more difficult. While it is relatively easy to prosecute a violation of an order, frequently requiring no more than the police officer's observation that the defendant was present, it is often more difficult to prove domestic assaults and related crimes. It should be noted that police performance varied. East Providence arrested 24 out of 24 alleged order violators; Warren arrested 13 out of 13; West Warwick, 20 out of 21 and Woonsocket, 29 out of 30. Pawtucket police arrested almost 91%. On the other hand, Providence police arrested only 82%, Cranston 73% and Johnston only 58% or 15 out of 26.

It may be that police were unable to arrest in specific cases because the party or parties involved were issued restraining orders pursuant to §15-5-19 that is more limited than orders issued pursuant to §15-15-1 et seq. or 8-8.1-1, et seq. Violations of these orders subject the defendant to contempt of court and constitute a crime only if the restraining order was issued to protect a person against bodily harm and/or against threat of imminent bodily injury (§§15-5-19(b)(1)(a), (2)(c)). Some police interpret the language to mean they may only arrest violators of these protective orders if the victim has been bodily harmed or threatened with imminent bodily injury. They do not believe these orders call for mandatory arrest otherwise, notwithstanding §12-29-2 of the Domestic Violence Prevention Act that defines these orders along with the others as "protective orders (§12-29-2(c))" that are included in the mandatory arrest provisions of §12-29-3 (b)(1)(iv).

### **Victim Safety Recommendations**

#### **1. Defendants issued No Contact Orders by either the bail commissioner or the court should be kept in the police station or court until reasonable efforts have been made to inform the victim of the No Contact Order.**

If the victim has already been apprised by the police in advance that such an order will be made then the defendant need not be detained. Otherwise, because these orders are not self-enforcing, the victim should be contacted and informed of the No Contact Order as soon as possible. Written notification received two days later, even two hours later may be insufficient. If the abuser is intent on seeking revenge, retaliation or to continue the abuse upon release, the victim should be warned that renewed contact represents defiance of the court order, indicating increased risk-taking behavior on the defendant's part.

#### **2. Bail laws should be reformed to allow courts to consider the danger defendants present to their victims.**

There are a number such statutes around the country. Massachusetts enacted its current bail statute after a defendant was released on \$5,000 cash bail after seriously assaulting his wife in 1994. A 280-pound security guard, the defendant had previously spent two years in prison for an earlier assault and kidnapping in 1991. Although his

wife had a protective order against him, a probate judge ordered her to allow her husband to have visitation with their infant son. Three weeks after the defendant was released on bail, his wife delivered her son for visitation. The defendant was waiting for her, chased her down the street and murdered her. Within a month, the Legislature enacted Mass. Gen. Laws ch. 276.58A allowing courts to hold defendants pre-trial if they are found to be dangerous.<sup>42</sup>

Twenty percent of the men who killed their intimate partners in Vermont between 1990 and 1999 had domestic violence cases pending at the time of the murders.<sup>43</sup>

### **3. Prosecution of high-risk offenders, particularly perpetrators of domestic and sexual violence, should be enhanced and victim collaboration increased.**

In order to insure that victims are protected from harm and the threat of harm, prosecution should be enhanced and victim collaboration increased. Victims' safety should not be dependent upon the arcane structure of Rhode Island Courts and bifurcated system of prosecution. Recommendations to enhance domestic violence prosecution in the District Court already proposed should be implemented.

Notwithstanding the challenge, a number of diverse jurisdictions around the country have developed highly successful programs for misdemeanor domestic violence prosecution.<sup>44</sup> Further, increased arrest and successful prosecution of misdemeanor domestic violence defendants has proven to correlate with decreased domestic homicides. In San Diego, for example, increased misdemeanor arrest and prosecution rates more than halved domestic violence homicides in that City in one year and has kept them down for the past decade.<sup>45</sup> In other words, it appears that successful misdemeanor domestic violence prosecution may be a key step in domestic violence homicide reduction. If the criminal justice system waits until defendants are arrested for felony violations, it may prove too little, too late to reduce the overall rate and severity of domestic violence in the community. Cranston police provide one model of a paralegal joining its prosecution team for the prosecution of domestic violence cases to augment victim collaboration.

The Sexual Assault and Trauma Resource Center and Attorney General are working to strengthen the prosecution of sexual assault cases by establishing a Sexual Assault Response Team (SART), much like the multidisciplinary teams that cooperate on select child abuse cases through the Children Advocacy Center. With the cooperation of the Attorney General, if this national model is implemented in Rhode Island, specially assigned prosecutors will be assigned these cases. The initial proposal calls for referrals from five police departments in the state. This program should be nurtured and, if it

---

<sup>42</sup> See, also e.g., Ind. Code §35-33-8-3.2.

<sup>43</sup> Martinez, J. (2000). A Decade of Vermont's Domestic Homicides: 1990 through 1999. Montpelier Vt: Vermont Network Against Domestic Violence and Sexual Assault.

<sup>44</sup> See, e.g., Gwinn, C. & O'Dell, A. (1993). Stopping the Violence: The Role of the Police Officer and the Prosecution. Western State University Law Review: 2000, 1501-1521.

<sup>45</sup> Similar correlations between arrest, prosecution and significant decline in domestic homicides have been documented in Tampa, Florida, Nashville, Tennessee, Newport News, Virginia, and Tulsa, Oklahoma.



performs as it does elsewhere, expanded to cover the entire state. Not only does SART enhance prosecution, but it also provides built in service and advocacy for the sexual assault victims.

Rhode Island officials might consider the establishment of a Family Violence Center as the Mesa, Arizona police have done. Their Center is similar to Rhode Island's Children's Advocacy Center, but is expanded to include all domestic, family and sexual assault cases. In 1995, Mesa police recognized the need for a multi-agency interview center to help it deal with all domestic, family violence and sexual assault cases, among others. Police were frustrated with their inability to secure timely, accurate medical examinations of victims by local medical facilities. They were also concerned that victims had to be interviewed in inhospitable police headquarters, frequently sharing cramped quarters with their victimizers. Further, victims were subject to multiple interviews by different officials. Several detectives came up with the idea of a Center Against Family Violence. The Center was to offer a one-stop place for victims to be examined and interviewed, expeditiously and safely.

Obstacles were many, including turf issues, lack of interagency cooperation, decentralization of police and funding. Police used monies previously used for "drug buys" to fund the Center. Within a year, the Center was opened; eventually containing police, prosecutors, medical and social service providers and victim advocates under one roof. In 1997, the Center handled 2,283 cases and nearly 300 medical exams. Victim specialists reached out to over 1,100 victims and volunteers at the Center responded to 463 calls, assisting more than 2,000 victims in the field.

The Children's Advocacy Center might be expanded similarly to offer local police an agency that can offer the state's most vulnerable and needy victims one stop assistance and increase chances for successful case prosecution to protect victims and hold offenders accountable. The Center should include a victim service unit specifically responsible for assisting victims in securing all rights and services afforded them by the state. Among other things, Center advocates should insure victims or their representatives understand their rights and assist them in completing victim impact statements for submission to court, including all restitution claims. The advocates should also assist victims in securing any state compensation due them whether the cases are successfully prosecuted or not. Increased victim participation and advocacy in the court will go a long way in securing more consistent, accountable sentencing in court.

#### **4. Sanctioning of domestic violence and sexual assault perpetrators should be strengthened.**

Sentencing patterns should be examined. Beginning with the United States Civil Rights Commission report in 1982, national authoritative bodies examining the issue have uniformly come out against court diversion of domestic violence cases.<sup>46</sup> The

---

<sup>46</sup> U.S. Civil Rights Commission (1982). Under the Rule of Thumb: Battered Women and the Administration of Justice; see, also, National Council of Juvenile and Family Court Judges (1990). Family

practice of filing domestic violence cases itself is problematic. Not only does it denigrate the seriousness of the case and allow records of batterers to be erased after three years, but also studies have shown that the practice may seriously undermine any concurrent counseling provisions. In one of the few quasi experimental studies of batterer counseling conducted to examine program efficacy where domestic violence cases were similarly diverted by the court, the batterers ordered into counseling proved significantly **more** violent than those who were not so ordered.<sup>47</sup> Researchers conjecture that the context of diversion overpowers the message of the batterer program reducing it to a “support group” for batterers that reinforces their abusive behavior.

Specialized probation supervision of sex and domestic violence offenders should be expanded to include all pertinent probationers. Supervision protocols should be victim as well as offender focused. As currently recognized by the specialized units, the chief probationary goal in these cases is victim safety, not offender treatment. It is difficult for probation to achieve this goal without maintaining contact with the victim. In many cases, however, the probationer may no longer be involved with the victim of the offense for which he is on probation. In these cases, probation should warn new intimate partners of the defendant’s potential for abuse.

If the domestic violence probationer forms a relationship with a new “significant other,” the probationer should be required to inform his new partner why he is on probation. His failure to disclose his prior behavior should constitute grounds for probation revocation. Probation counselors should check with all new partners to insure compliance. Jurisdictions that regularly mandate such “intimate partner disclosure” have found it efficacious. Once warned, abusers’ new partners if abused are less apt to believe it was their fault or the abusers’ promise that it won’t happen again.

Officials should re-examine the required length of mandated batterer counseling programs. The latest research on batterer programs indicate that while their treatment effects may not be impressive, they do significantly suppress re-abuse while offenders are enrolled in them.<sup>48</sup> This would suggest the need for much longer programs. In California, programs must be a minimum of one year in length and probationary sentences must be three years (Cal. Penal Code §1203.097).

It should be noted that the minimum sentence, one year, provided under Rhode Island law for third or subsequent offense domestic violence violators is less than half of the sentence provided for first offense domestic violence misdemeanor violators in Massachusetts!

The law should be amended to allow the state to prosecute violators of protective and No Contact Orders with felony aggravated stalking charges as is presently provided

---

Violence: Improving Court Practice, Recommendations from the National Council of Juvenile and Family Court Judges, Reno, NV.).

<sup>47</sup> Harrell, A. (1991). Evaluation of Court-Ordered Treatment for Domestic Violence Offenders. Washington DC: Urban Institute.

<sup>48</sup> Davis, R., Taylor, B. & Maxwell, C. (2000). Does Batterer Treatment Reduce Violence? A Randomized Experiment in Brooklyn, Executive Summary. Rockville, MD: National Institute of Justice.

for in Michigan. Once specifically informed of court ordered prohibitions from contacting or abusing victims, abusers who continue to seek out their victims are guilty of stalking them and should be sanctioned appropriately. Their behavior cannot be attributable to a momentary lapse in judgement brought about by rage, alcohol or influences beyond the offenders' control and should not be treated leniently.

Michigan Crim. L. §750.411i charges order violators with aggravated stalking if their violations would cause a reasonable person to feel threatened or harassed. According to prosecutors from the state's Prosecuting Attorney's Association, the law is ideally suited for holding abusers accountable and safeguarding victims. Convictions are punishable by up to five years in prison; ten if the victim is less than 18 and the abuser is at least five years older. The Aggravated stalking offense also includes offensive behavior in violation of conditions of probation, parole, pre-trial release or conditions of bond.

**5. Victims should be able to obtain protective orders from either the Family Court or District Court regardless of the relationship of the parties.**

Unmarried victims should be able to obtain orders in Family Court and married victims should be able to obtain orders in District Court. It is clear that victims, for whatever reason, find it easier to access the Family Court than the District Court to obtain protection. For this reason, victims should be allowed to petition the Family Court for protection even if they are not married to their abuser. This should afford protection to an increased number of unmarried but abused victims across the state.

Judges should not issue orders pursuant to §15-5-19 if the safety of the petitioner is at risk.

In addition, all courts must secure safe, suitable space for victims seeking orders to meet with Coalition Advocates and apply for protection. Victims are more likely to retain orders once secured if they believe the criminal justice system takes their safety seriously. Courts that commit few if any resources to accommodate abused petitioners undermine that message.

**6. Abuse petitioners should be able to participate in video conferencing connecting domestic violence shelters and related agencies with courthouses via the Internet, enabling petitioners to obtain emergency and temporary *ex parte* orders without going to court.**

The U.S. Department of Commerce's National Telecommunications and Information Administration is currently funding video-conferencing systems for related domestic violence agencies and courts. The first such demonstration project began October 2001 in Maine. The project was begun because abused petitioners were found to be too afraid to go to court to obtain protection orders, even fearful of being attacked in

court parking lots. The system also assists victims and courts when the victims are hearing impaired because ASL interpreter services are available through the service.<sup>49</sup>

Rhode Island officials should investigate the possibility of establishing a similar under friendly system in their state.

**7. Eligible state civil orders should be entered into the FBI's National Protection Order File as soon as representatives of the Attorney General and Courts are able to establish policies and procedures that allow their entry.**

**8. Civil orders should be entered into the RONCO system at point of issuance.**

The entry of orders at the point of origin should allow for more immediate and accurate entries. The current process delays transmittal of the orders to the Attorney General's Office to the end of each court day. Copies of the handwritten orders are sometime illegible or do not arrive at all as a result of paper jams in the court transmittal equipment. It is also reassuring for victims to know that orders for protection are immediately communicated to police upon being granted. Most victims come to court in immediate crisis. The system's response should be immediate as well.

**9. Police Departments should review cases where Protective or No Contact Orders have been violated in the presence of officers and police have not arrested the violators.**

Enforcement has proven the Achilles' Heel of protective/No Contact Orders across the country. Concurrent domestic violence arrests do not make order violation charges redundant. It is generally easier to prove order violations than, for example, assaults. Victims are generally not required to provide testimony, relieving victims of the burden of having to testify to secure a conviction. Further, it provides evidence to the bail commissioner, prosecutor and judge that the defendant may not be a suitable candidate for release pre or post trial if convicted. Departments should examine why arrests are not made when domestic violence occurs when protective orders exist. Departments should examine cases where officers fail to arrest for order violations where such orders exist and the abuser is arrested for other domestic violence crimes.

**10. There should be a state Fatality Review Commission to investigate all domestic homicides to learn better ways to prevent future deaths.**

A number of jurisdictions around the country have established fatality review agencies. Most of the significant reforms in the criminal justice response to domestic violence have come about as the result of lessons learned from specific homicides. Many states have enacted legislation to establish fatality review commissions or boards.

---

<sup>49</sup> \$42.5 million is available with grants averaging \$500,000, see, [top@ntia.doc.gov](mailto:top@ntia.doc.gov).

California enacted the first in 1978.<sup>50</sup> Others have established them on an ad hoc basis. New York, for example, established a Commission on Domestic Violence Fatalities in 1996. In Rhode Island, the Domestic Violence Training and Monitoring Unit may be ideally suited to form such an investigative unit if it receives additional powers and resources as well as the cooperation of police, prosecutors, judges and other relevant officials.

The purpose of these commissions is not to pin the blame on specific agencies or officials. It is to determine counter measures to identify structural weaknesses in the response to domestic violence and barriers that may prevent victims from obtaining assistance or the criminal justice system from correctly identifying potential murderers and stopping them.<sup>51</sup> At the very least, such commissions help to insure that no victim dies in vain.

---

<sup>50</sup> Cal. Penal Code §§11163.3; see, also, Nev. Rev. Stat. §217.475; Del. Code Ann. tit. 13 § 2105.

<sup>51</sup> See, e.g., Websdale, N., Town, M., & Johnson, B. (Spring 1999). Domestic Violence Fatality Review: From a Culture of Blame to a Culture of Safety. Juvenile and Family Court Journal, 50:2, 61-75.

## **Appendix**

### **1. Rhode Island Victims' Rights Needs Assessment**

#### **Summary of Victim Survey:**

##### **Survey Methodology**

We interviewed a sampling of victims identified by Justice Assistance and the Attorney General's Victims' Services Unit regarding their victimization and their involvement with the criminal justice system. The sample was composed of victims of felonies, mostly within the past two years (72%). All of the victims' alleged perpetrators were arrested for felony offenses. All but 2% were prosecuted and most ended up being sentenced to jail and probation.

As such, these victims represent a specific subset of all Rhode Island crime victims. Of all crime victims in the state, they are the most likely to receive mandated victim services and rights. Also they are the most likely to be involved in the system for the longest periods of times, between arrest, prosecution and eventual release of the perpetrator from prison. Therefore this sample of victims are most likely receive the benefits of mandated services and rights.

In the sample, 23% were victims of domestic violence; 4 % were victims of sexual assaults; 11% were family members of homicide victims. The vast majority of these family members were parents of children who were murdered. One family member's husband was murdered. Most, 80%, were the victims of a single perpetrator. Almost 60% of the victims knew their perpetrators. Most of the domestic violence perpetrators were husbands or ex-husbands.

Almost half of the victims (47%) were injured with the majority (59%) reporting "very" or "somewhat serious" injuries.

##### **Law Enforcement**

The overwhelming majority of victims expressed satisfaction with the police who they found to be polite, caring, sensitive and committed to catching the criminal. Two thirds reported the police gave them information about or referred them to victims' services. However, only 44% reported they were given information on victim compensation. While police may have purposely avoided giving information to victims whom they deemed to be ineligible for compensation, almost half of the victims reported "physical injuries." Further, 38% reported receiving medical treatment or time in the hospital as a result of their injuries. 61.5% said they suffered financially as a result of the crime. Only 24% of the victims went on to "contact someone in order to receive victim compensation." In contrast, almost two thirds of the victims either contacted or were contacted by a victim services organization.

Almost 60% felt police kept them informed of the police investigation. Police, however, did inform 88% of the victims of the arrest. Only 7.6% of the victims reported that they were not informed of the arrest. Only a slight majority of victims, 51% reported that they were talked to about their wishes concerning the perpetrators' release on bail. Most were contacted (76%), but most (60%) were not informed that they could make recommendations concerning the defendant's release pre-trial. As a result, less than 13% reported they felt encouraged to speak at the hearing. Most did not speak. Of the few who did, most felt they had no impact on the hearing outcome. Most of the defendants were released pre-trial.

Most of the victims worried about their or their family members' safety, with 20% being "very concerned" and half being "somewhat concerned." Police or prosecutors informed most victims of their right to be protected and the process required to obtain that protection. 30% were not so informed.

Most of the defendants (62.5%) were released pre-trial.

### **Court Prosecution**

A consistent minority of victims either did not understand how the case was prosecuted in court or were not informed of what happened. A quarter to a half of the victims consistently reported they didn't know, for example, if there was a pre-arraignment hearing (in Providence), an arraignment hearing, or a pre-trial hearing before the case was concluded. Of those who reported they were consistently informed of these hearings, half reported being informed by prosecutors. Only 15% identified victim advocates as the persons who informed them of court dates. Many victims may have not differentiated between prosecutors and victim advocates.

Most did not feel encouraged to attend arraignment and other pre-trial hearings. Most (60%) reported they did not attend the arraignment hearings. Those who attended felt their presence had no impact on the hearing outcome. Most reported they attended at least one subsequent court hearing. Most felt their attendance had no impact on the hearing outcome.

More than half, 54%, reported being consulted as to whether or not the case should go to trial. Three quarters were told they had the right to discuss the case with the prosecutor. But the majority (54%) did not feel encouraged to do so. Sixty-five percent said the prosecutor consulted them during the trial. 81% of the victims were never scheduled to testify. Of those scheduled to testify, only 27% actually did testify.

Most reported meeting with the prosecutor once ( $X = 1.12$  meetings). The mean number of meetings with a victim advocate was 2.04 for the 30% of victims who met with a victim advocate at all.

62% were satisfied with the prosecution of their cases. Nineteen percent were dissatisfied and the rest reported feeling neutral or unsure. Fewer were satisfied with the victim advocate with 38% being satisfied, 15% dissatisfied and the rest feeling neutral or unsure.

Again, the vast majority did not feel encouraged to attend the sentencing of the defendants. Only a third said anyone consulted with them regarding a sentencing recommendation.

Only 24% responded to questions about victim impact statements. Of those who responded, almost half said they were given an opportunity to make a written or oral statement. Most felt encouraged to do so by a victim advocate. Most of those who responded said they did make a statement, 53% in writing, 20% oral and 13% both. 61.5% made a sentence recommendation in their statement. Most (54%) thought their statement had some effect in regard to whether the defendant was sentenced to jail. At the same time, most felt their statements had no effect on whether the defendant was ordered to pay restitution to them.

## **Sentencing**

61.5% of victims suffered financially including property loss and/or medical bills. 70% suffered “physically,” 100% “emotionally” and 77% “socially.” Only 17% reported being ordered restitution and only half of the orders were for the full amount of their losses. Only 4% of the victims were satisfied with the amount of money that the defendant was ordered to pay.

Most of the perpetrators were sentenced to jail, followed equally by probation and fines only. Most thought the sentence was about right, not too lenient or too harsh. However only half of the victims were “satisfied” with the case outcome.

Most victims were not told of the possible release date of defendants sentenced to jail. Very few of the inmates have come up for parole. Of those that did, only 40% of the victims reported being notified.

Over 70% of the victims said if they were re-victimized, they would call the police. Only 14% said it would be unlikely to call the police again.

## **Victim Satisfaction with Criminal Justice System/Victim Advocates**

	<b>Satisfied</b>	<b>Not Satisfied</b>	<b>N/A</b>
<b>police</b>	76%	24%	0%
<b>prosecutor</b>	70%	24%	6%
<b>victim advocate</b>	51.5%	20.5%	28%
<b>corrections</b>	32%	6%	62%
<b>judge</b>	53%	12%	29%
<b>criminal justice system</b>	53%	38%	9%



### Victim Satisfaction with Court and related Victim Services

	Satisfied	Not Satisfied	N/A
explanation of court system	62%	38%	0%
informed of upcoming hearings	68%	32%	0%
informed of postponed hearings	53%	29%	18%
opportunity to have say in whether case dropped or lesser plea accepted	59%	41%	0%
opportunity to have say in sentence	56%	29%	15%
Informed of outcome	53%	35%	12%
informed of offender status in corrections	41%	29%	30%
informed of victim services	59%	35%	6%

### Victim Ratings of Criminal Justice Performance

	Adequate	Inadequate	N/A
apprehension of perpetrator	82%	18%	0%
informed of case	62%	38%	0%
ability to have input	59%	41%	0%
case preparation	68%	29%	13%
fairness of trial	53%	35%	12%
fairness of verdict or plea	50%	41%	9%
fairness of sentence	41%	44%	15%
speed of process	62%	38%	0%
support services available for victim or victim's family	47%	47%	6%

### Victim Crime Impact

	yes	no	not sure
loss time from work or school due to injuries	41%	59%	0%
loss time to provide police information	41%	59%	0%
loss time to assist prosecutor/trial	47%	53%	0%
loss of money or property stolen	47%	53%	0%
property damaged or stolen	44%	56%	0%
medical treatment/hospitalization for injuries	38%	62%	0%
receive counseling for mental/emotional injuries	26.5%	73.5%	0%
had insurance hike	6%	91%	3%
problems with family	38%	62%	0%

### Victim profile

**Age:** Most victims were between 25 and 64. 7.5% were over 65.

**Employment:** Only 44% were employed full time, 11% part time, 17% were unemployed. 11% were retired and 7.5% were disabled. The remaining 14% who answered were either students or “kept house.”

**Education:** Almost half didn’t graduate high school. An additional 20% graduated high school. The rest either graduated college or went beyond college.

**Race/Ethnicity:** Most identified themselves as white. 9% identified themselves as black, 3% Hispanic and 2% Asian.

**Household Income:** A little less than 40% reported household incomes of less than \$25,001 before taxes. 25% reported household incomes between 25,001 and \$50,000. Only 25% reported incomes above that. 13% refused to answer or were unsure.

**Sex:** 60% of victims were female.

## **2. Rhode Island Victims' Rights Needs Assessment**

### **Findings and Recommendations Summary**

#### **A. Victim Notification Findings:**

**Major Finding:** The majority of crime victims are not notified of their rights as enumerated in state statutes.

- 1. The Majority of crime victims are not being notified of their pre-arrest rights.** See recommendations # A1 & 3.
- 2. Many crime victims are not being notified of the defendant's arraignment upon arrest if the suspect is not arrested in the presence of the victim. With the exception of domestic violence cases, victims are not being informed of the perpetrator's release on bail or personal recognizance.** See recommendations # A2 & 4.
- 3. Victims of domestic violence are routinely receiving notification of their rights by police.**
- 4. With the exception of domestic violence cases, most victims of misdemeanor offenses are not notified of hearings after arraignment, nor informed of their right to participate in those hearings and request restitution. Victims of non-domestic violence offenses are not routinely informed of court dispositions.** See recommendations # A5, 6, 7, 8, & 9.
- 5. Victims of domestic violence do receive routine notification of court hearings after arraignment. They are encouraged to attend court hearings and participate. They are routinely told of case dispositions.**
- 6. Domestic violence victims do not receive the same level of advocacy and services outside of District Court.**
- 7. Victims of non-domestic violence misdemeanor crimes receive notification of case disposition only if the case is filed as a disposition. Victims are not notified if offenders violate the conditions of the court filing.** See Recommendation # A7 & 9.
- 8. Victims of defendants held for bail hearings receive notification.**

- 9. Most victims of felony offenses receive routine notification of Superior Court proceedings.**
- 10. Victims are not notified of pre-conviction releases in a timely manner. See recommendation # A9.**
- 11. Victims of domestic violence felony offenses receive additional notification from the Prosecutor's Special Domestic Violence Unit.**
- 12. Most victims receive notification of parole hearings and notification of parole releases.**
- 13. Victims are not generally notified of an inmate's release when not paroled. See recommendation # A9.**

**Victim Notification Recommendations:**

- 1. Police should furnish all crime victims with a card or brochure that provides basic financial and other assistance information as they do currently with victims of domestic violence. The material should include special information for those classes of victims specifically recognized in the Victim's Bill of Rights, including children victims, relatives of homicide victims, and other vulnerable victims with special needs such as elderly victims. Among other things, the information should include basic referral information to general victim service providers, the Helpline and related resources.**
- 2. Police should adopt the procedures established by the Warwick Police Department to ask all victims if they wish to be notified of the suspect's arraignment when that information is available. The victims' desires should be included in the police report for follow up and implementation. If a warrant is issued for the suspect, the victim information should be transferred to the warrant itself.**
- 3. Police should ask victims if they wish to receive information regarding the progress of any criminal investigation. If victims desire it, police should send them written notifications of any open investigation until the suspect is apprehended or the investigation is closed. Police departments should adopt a uniform understanding of what constitutes an "open"**

investigation to insure consistency in implementation of this recommendation.

4. Police training should include more information on general victimization, victim rights and the role of police as service providers and guardians of their rights.
5. District Court judges should require police prosecutors and/or solicitors to certify that good faith attempts have been made to notify the victim of the hearing and therefore any victim's failure to attend represents the victim's preference. If the parties are unable to satisfy the court that a good faith effort has been made to notify the victim, then the court should review the facts of the particular case and rule specifically if they warrant proceeding without the victim or not.
6. Police should provide victims of misdemeanors with a basic victim impact check off form that includes estimates of any financial losses or potential losses. Victims should be immediately referred to a court-related victims' services agency or the prosecutor for more information and assistance in completing such a form in time for the earliest possible District Court hearing. The substantial expansion of Law Enforcement Advocates or Helpline "go outs" could offer more immediate assistance to victims and take this additional burden off police officers.
7. The Court's Victims' Services Unit should notify all victims in District Court of the case disposition, including the civil judgement attached to restitution orders. The Rhode Island Coalition Against Domestic Violence should include the civil judgement provision explanation in its notification to victims of domestic violence. Case disposition should include both the initial dispositions handed down by the court as well as any subsequent court proceedings that alter that disposition, including revocation or contempt hearings.
8. Police departments should alter the basic incident report forms utilized to capture additional victim information. In addition to recording the victim's current address, police should ask the victim to provide them with the name, address and phone number of a third party who is most likely to know how criminal justice officials can contact the victim in the future. If the victim does not desire his/her new address to be known, the third party can be asked to contact the victim. The third party could be a relative, friend, employer or other person living in

**or outside the state. Police should then include this information on the police incident report.**

- 9. There should be one central “Rhode Island Victim Notification Agency” solely responsible and accountable for all victim notifications mandated by law from arrest to final release from prison. The agency should be accountable for its performance and serve both executive and judicial agencies on the state and local level.**

#### **B. Victim Participation Findings:**

**Major Finding: The majority of crime victims do not actively participate in the criminal justice system and receive rights and services mandated by law.**

- 1. The criminal justice system has not taken significant strides to accommodate or encourage victim participation. See recommendations # A9 & B5.**
- 2. The provision of victim services itself has not been structured or organized to accommodate or encourage victim participation. See recommendations B2 & 6.**
- 3. Written victim notification alone is insufficient to encourage involvement. See Recommendations B1 & 7.**
- 4. Victims have little redress for rights violations. See recommendation # B4.**
- 5. Some relatives of homicide victims are not receiving the full benefits of available victim services provided for them. See recommendation # B8.**
- 6. Special services are regularly provided to child victims of abuse. See recommendation # B9.**
- 7. Special services are regularly provided to victims of domestic and sexual abuse including Helpline crisis calls to shelters and longer term counseling and advocacy.**

#### **Victim Participation Recommendations:**

- 1. The provision of written notification to victims should represent the absolute minimum outreach to victims. Victims, whenever possible, should be provided with personal contact in addition to written notification informing them of their rights**

and assisting them in participating in the criminal justice system.

2. There should be a clear distinction drawn between court-based or independent victim advocates and other prosecution-based victim advocates. Both are essential.
3. Victims should be able to obtain redress for violations of their rights as victims. Legislation should be enacted allowing victims to hold local and state officials accountable for their good faith effort to provide victims the rights afforded them by statute.
4. The state should establish a Crime Victims' Rights Board to investigate, mediate, review and redress victim complaints of rights violations.
5. Criminal justice agencies should review and revamp their operations to encourage active victim participation. Each should establish a victim advisory board to assist it.
6. The De Novo two track trial system should be eliminated. Misdemeanors should have the same right to appeal matters of law as felons.
7. Separate space should be provided for victims and their advocates in all courthouses.
8. Relatives of homicide victims should be assisted as soon as possible.
9. The Child Advocacy Center should provide child victims and their parents with assistance in filling out victim impact forms and/or insuring their voices are heard at all stages of the criminal justice system.

#### **C. Victim Compensation Findings:**

**Major Finding:** Many eligible victims suffering out of pocket losses as a result of the crimes committed against them are not receiving court-ordered restitution.

1. Many defendants are not ordered to pay their victims for out of pocket losses directly attributable to their crimes. See recommendation # C3.

2. **Some restitution orders imposed in court are not entered into the court accounting system.** See recommendations # C2 & 5.
3. **Victims do not always receive restitution paid by defendants in compliance with court orders.** See recommendations # C6 & 7.
4. **Rarely do victims exercise their right to collect unpaid restitution in the civil courts.**

**Victim Compensation Recommendations:**

1. **The Central Registry files should be reviewed so that files pertaining to closed criminal cases can be removed and victims notified that the cases have been terminated and they must pursue civil suits to collect any monies due them.**
2. **All cases recently filed in Superior Court should be reviewed to determine if restitution orders were included. If so, they should be entered into the Central Registry.**
3. **Restitution should be required by statute as an element of all sentences or as a condition of diversion, filing or conditional dismissal.**
4. **Restitution orders should include civil-like awards, beyond simple out-of-pocket loss.**
5. **There should be one central Restitution Collection and Disbursement Agency responsible for the collection and dissemination of all court, corrections, and parole restitution payments and disbursements.**
6. **Inducements to encourage quick and complete restitution payments should be instituted such as the supervision fee waiver given by Justice Assistance to defendants who meet their restitution obligations in a timely fashion.**
7. **Victims of crime should be paid first before defendant payments are applied to court costs, fines, fees and other financial obligations except for child support.**

**D. Victim Safety Findings:**



**Major Finding: Victims of crime are not being afforded adequate protection in some areas of the criminal justice system.**

- 1. The failure of the state to notify victims of crime, or to notify them in a timely fashion, endangers some victims. See recommendation # D1.**
- 2. Victims of crimes of violence, including victims of chronic abuse and/or sexual predators, are not being adequately safeguarded between arrest and trial. See recommendations # D2, 4, 9 & 10.**
- 3. Most victims of domestic and sexual violence are not receiving the benefit of existing dedicated prosecution programs. See recommendation # D3.**
- 4. Many victims of domestic violence are not being safeguarded against their perpetrators after court adjudication or findings of fact. See recommendation # D4.**
- 5. Victims of abuse are not receiving the full benefits of court protection assistance programs in civil proceedings. See recommendations # D5, 6, 7 & 8.**

**Victim Safety Recommendations:**

- 1. Defendants issued No Contact Orders by either the bail commissioner or the court should be kept in the police station or court until reasonable efforts have been made to inform the victim of the No Contact Order.**
- 2. Bail laws should be reformed to allow courts to consider the danger defendants present to their victims.**
- 3. Prosecution of high-risk offenders, particularly perpetrators of domestic and sexual violence, should be enhanced and victim collaboration increased.**
- 4. Sanctioning of domestic violence and sexual assault perpetrators should be strengthened.**
- 5. Victims should be able to obtain protection orders from either the Family or District Court regardless of the relationship of the parties.**

- 6. Abuse petitioners should be able to participate in video conferencing connecting domestic violence shelters and related agencies with courthouses via the Internet, enabling petitioners to obtain emergency and temporary ex parte orders without going to court.**
- 7. Eligible state civil orders should be entered into the FBI's National Protection Order File as soon as possible.**
- 8. Civil orders should be entered into RONCO system at the point of issuance.**
- 9. Police Departments should review cases where Protective or No Contact Orders are violated in the presence of officers and no arrests are made for said violations.**
- 10. There should be a state Fatality Review Commission to investigate all domestic homicides to learn better ways to prevent future deaths.**